

T H E
Attorney's Practice
I N T H E
Court of King's Bench :
O R, A N
I N T R O D U C T I O N
T O T H E

KNOWLEDGE of the PRACTICE of that
Court, as it now stands under the Regulation
of several late ACTS of PARLIAMENT,
RULES, and DETERMINATIONS of the
said COURT;

W I T H
Variety of useful and curious PRECEDENTS in
English, settled or drawn by Counsel; and a
Complete INDEX to the Whole.

By ROBERT RICHARDSON, of the
Inner Temple, Gent.

The Fifth Edition, with large Additions.

In TWO VOLUMES.

V O L. II.

L O N D O N :

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For J. WORRALL, W. STRAHAN, W. JOHNSTON,
P. URIEL, W. OWEN, and W. FLEXNEY. 1769.



THE
Attorney's Practice
 IN THE
Court of King's Bench.

Abatement.

AND the said T. T. by A. B. his at- *Plea in abate-*
 torney, comes and defends the force *ment, that*
 and injury, when, &c. and prays *there was an-*
 judgment of the said bill, because *other church-*
 he says, that on the tenth day of *warden not*
 year of our Lord 1695. in the said bill men- *named in the*
 tioned, one T. S. together with the said T. T. *bill.*
 was warden and receiver of the money, and
 had the care and administration of the goods
 and chattels of the said church for the time
 aforesaid, and that the said T. S. is still in be-
 ing and alive, to wit, at London aforesaid, in
 the parish and ward aforesaid; *Without this, Traverse.*
 that the said T. T. was warden and receiver.

B of

Abatement.

of the money, and had alone the care and administration of the goods and chattels of the said church by the time aforesaid, as the said *N.* and *T.* in their said bill have above declared; and this he is ready to verify: Wherefore, for that the said *T. S.* is not named in the said bill, the said *T. T.* prays judgment of the said bill, and that the said bill may be quashed, &c.

Demurrer.

And the said *N.* and *T.* say, that by any thing by the said *T. T.* above by pleading alleged, the said bill of the said *N.* and *T.* ought not to be quashed, because they say, that the said plea by the said *T. T.* for quashing the said bill above pleaded, and the matter therein contained, are not sufficient in law to quash the said bill of the said *N.* and *T.* or to bar them the said *N.* and *T.* from maintaining their said action against the said *T. T.* and this they are ready to verify: Wherefore for default of a sufficient plea in this behalf the said *N.* and *T.* pray judgment, and that their said bill may be adjudged good, and that the said *T. T.* may answer to the said bill, &c. And for causes of demurring in law to the said plea, according to the form of the statute in such case made and provided, they shew, and to the court here demonstrate, these causes following, to wit, for that the said plea is uncertain, and contains in itself a negative pregnant; and because the said *T. T.* by the said plea has made full defence, and traverses a matter not traversable, and it wants form, &c.

*Causes of de-
murrer.*

W. Thompson
* *And*



* And the said *E.* by *T. S.* his attorney comes and defends the force and injury, &c. and says, that the said *E.* ought not to be answered to his said bill, because he says, that the said *E.* is an alien born at *Calais* in the kingdom of *France*, in parts beyond the seas, under the ligeance of *Louis* king of *France*, an enemy of our said lord the now king of *England*, born of father and mother, enemies of our said lord the king; and adhering to his said enemies, and come into the kingdom of *England* without the safe conduct of our said lord the king; and this he is ready to verify: Wherefore he prays judgment if the said *E.* ought to be answered to his said bill, &c.

Plea that the plaintiff is an alien enemy.

B. R.

Andr. 76.

Lill. Ent. 1.

7 Co. 2.

4 Rep. 55.

Salk. 2, 46,

116.

Pract. Reg. 8.

Raft. 252,

605.

Vet. int. 49.

Finch 28.

Yelv. 148.

Afht. 11.

Davis 38.

Theol. 7, 8,

10.

Carth. 265,

302.

William Hall.

B 2

And

* Plea in abatement, that the plaintiff is an alien enemy, &c. Replication. that he was *indigena* born at *Westminster*; *et hoc paratus est verificare.* Demurrer, for that the plaintiff ought to have concluded his replication to the country; and of that opinion was *Holt* ch. just. because every plea concerning the person pleaded in abatement is triable where the action is brought; but where such a plea is pleaded in bar of the action, the venue shall be alledged, and it shall conclude with an averment, because such a plea is not to the person, but pleaded to the right. Judgment for the plaintiff on another point. *Easter 2 Annae, B. R. Wiff v. Sutton,* 2 *R. Raym. 853. Salk. 2. Vide 6 Mod. 57, 91.*

Plea, misnomer the file of the plaintiff: a corporation. B. R. Lilly's Ent. 4.

Traverse. Salk. 8. Pract. Reg. 199.

Demurrer thereto.

And the said B. by N. H. his attorney, comes and defends the force and injury, &c. and prays judgment of the said bill, because he says; that the said plaintiffs are named and called the Master and keepers or wardens and commonalty of the mystery or art of stationers of the city of London, and by that name and title have been always named and called; Without this, that they are named and called the Master and keepers or wardens and commonalty of the mystery and art of stationers of the city of London aforesaid, as by the said bill is above supposed; and this he is ready to verify: Wherefore he prays judgment of the said bill, and that the said bill may be quashed.

And the said master and keepers or wardens and commonalty of the mystery or art of stationers of the city of London say, that by any thing by the said B. above by pleading alledged, the bill of the said master and keepers or wardens and commonalty of the mystery or art of stationers of the city of London ought not to be quashed, because they say, that the said plea by the said B. in manner and form aforesaid above pleaded, and the matter therein contained, are not sufficient in law to quash the bill of the said master and keepers or wardens and commonalty of the mystery or art of stationers of the city of London, to which said plea they the said master and keepers or wardens and commonalty of

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of the mystery or art of stationers of the city of *London* have no need, nor are they bound by the law of the land in any manner to answer; and this they are ready to verify; Wherefore for default of a sufficient plea in this behalf, they the said master and keepers or wardens and commonalty of the mystery or art of stationers of the city of *London* pray judgment, and that the said bill of the said master, keepers or wardens and commonalty of stationers of the city of *London* may be adjudged as good, and that the said *B.* may answer to the bill, &c.

And the said *B.* says, that the said plea by *Joinder.*
the said *B.* in manner and form aforesaid above pleaded, and the matter therein contained, are good and sufficient in law to quash the said bill of the said master and keepers or wardens and commonalty of the mystery or art of stationers of the city of *London*, which said plea, and the matter therein contained, he the said *B.* is ready to verify and prove, as the court, &c. And because the said master and keepers or wardens and commonalty of the mystery or art of stationers, of the city of *London* do not answer to that plea, nor as yet have any ways denied it, he the said *B.* as before prays judgment of the said bill, and that the said bill may be quashed, &c. But because the court of our said lady the queen now here is not yet advised about giving their judgment of and concerning the premises, day is therefore given to the said parties to come before our lady the queen at *Westminster*,
Continuance.
Salk. 707,
776.

Abatement.

Judgment
respondeas
ouster.
Pract. Reg. 1.

Defendant
cravesoyer,
and pleads.

Special impar-
tance after a
plea.

ster, until *Saturday* next after the octave of the purification of the Blessed Virgin *Mary*, to hear judgment of and upon the same premisses, for that the court of our said lady the queen now here is not yet advised thereof. *At which* day before our lady the queen at *Westminster* came as well the said master and keepers or wardens and commonalty of the mystery or art of stationers of the city of *London*, as the said *B.* by their attornies aforesaid: Upon which, all and singular the premisses being seen, and by the court of our said lady the now queen here fully understood, and mature deliberation being thereupon had; for that it seems to the court of our said lady the now queen here, that the said plea by the said *B.* in manner and form aforesaid above pleaded, and the matter therein contained, are not sufficient in law to quash the said bill of the said master and keepers or wardens and commonalty of the mystery or art of stationers of the city of *London*: Therefore it is considered that the said *B.* answer further to the said bill, &c. And upon this the said *B.* by his said attorney comes and defends the force and injury, when, &c. And praysoyer of the said writing; and it is read to him, &c. And pleads in bar.

Upon which the said *J. D.* saving to himself all and all manner of advantages, exceptions and allegations of the said plea of the said *J. S. S. A. T. B. R. B. J. L. and R. H.* prays leave to imparle before our lord the king and lady

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lady the queen at *Westminster*, until *Wednesday* next after fifteen days of *St. Hilary*; and has it, &c. The same day is given to the said parties at the same place, &c. At which day before our said lord the king and lady the queen, &c. at *Westminster* comes as well the said *J. D.* as the said *J. S. &c.* by their attornies aforesaid: Upon which the said *J. D.* saving to himself as aforesaid, prays further leave to imparle thereupon, &c. before our said lord the king and lady the queen at *Westminster*, until *Tuesday* next after the purification of the Blessed Virgin *Mary*; and has it, &c. The same day is given to the said parties at the same place, &c. At which day before our said lord the king and lady the queen at *Westminster* comes as well the said *J. D.* as the said *J. S. &c.* by their attornies aforesaid. And the said *J. D.* says, that after the last continuance of the said plea, to wit, after the said *Wednesday* next after the morrow of the purification of the Blessed Virgin *Mary*, from which day the said plea was continued unto this day, to wit, *Tuesday* next after the octave of the purification of the Blessed *Mary*, to wit, on the tenth day of *February* in the year of our Lord 1689. the said *J. D.* was and now is absolved and released from the sentence of excommunication aforesaid, and restored to the christian communion and the sacraments of the church; And the said *J. D.* brings here into court the letters patent of *G. O.* doctor of laws, principal official of the court of *Canterbury* lawfully appointed,

Imparlanct continued

Replication; that after the last continuance the plaintiff obtained letters of absolution. B. R. Lill. Ent. 9.

Profer of the letters of absolution.

Statement.

pointed, testifying the said absolution: Which said letters patent follow in these words, to wit, G. O. doctor of laws, &c. [the letters of absolution set forth at large.]

Plea, misnomer in the defendant's christain name.
B. R.
Lill. Ent. 6.

And C. S. against whom the said R. G. by his bill exhibited complains by the name of C. S. by J. J. his attorney, comes and defends the force and injury, &c. and prays judgment of the said bill, because he says, that he was baptized by the name of C. and by that name from the time of his baptism hitherto has been always known and named by the name of C. Without this, that he the said C. now is or ever was known or named by the name of C. as by the said bill is above supposed; and this he is ready to verify: Wherefore he prays judgment of the said bill, and that the said bill may be quashed, &c.

Traverse.
Salk. 6, 712.
Pract. Reg.
199.

B. R. Misnomer in the defendant's surname.
Lill. Ent. 1.

And upon this R. A. by J. L. his attorney, comes and defends the force and injury, &c. and prays judgment of the said bill, because he says, that he is the same person against whom the said T. H. exhibited the said bill by the name of R. A. and that he is named and called by the name of R. A. and by that name from the time of his nativity was always called and known: Without this, that he is called by the name of R. A. or has been called and known by that name; and this he is ready to verify: Wherefore he prays judgment

Pract. Reg. 5.
4 Mod. 347.
10 Co. 122.
11 Co. 21.
Salk. 18.

Abatement.

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judgment of the said bill, and that the said bill may be quashed, &c.

And *W. G.* esq; against whom the said *T.* by his bill exhibited complains by the name of *W. G.* comes in his proper person and defends the force and injury, &c. and prays judgment of the said bill, because he says, that he on the day of exhibiting the said bill of the said *T.* and always before was, and yet is an esquire; and this he is ready to verify: Wherefore for that the said *W.* in the said bill of the said *T.* is not named and impleaded by the name of *W. G.* esq; as according to the form of the statute of additions, in the names of defendants in such bills filed, made and provided, he ought to be named and impleaded, the said *W.* prays judgment of the said bill, and that the said bill may be quashed, &c.

Plea, that the defendant is an esquire, and ought to be impleaded by that name.
B. R.
Lill. Ent. 6.

Stat. 1 H. 5.
Rast. 108,
298.
2 Keb. 824.
1 Vent. 151.
Salk. 7, 50, 5.

And the said *H. L.* by *R. S.* his attorney, comes and prays judgment of the said bill, because he says, that he the said *H.* long before the exhibiting the said bill, and also on the day of exhibiting the same, was and now is a doctor of physic in due manner made by the university of *Oxford*, to wit, at *London* aforesaid, in the parish and ward aforesaid: Wherefore, for that he the said *H.* is not named doctor of physic in the said bill, he prays judgment of the said bill, and that the said bill may be quashed, &c.

Plea, that defendant is a doctor of physic.
Lill. Ent. 2.

4 Mod. 47.

And

Plea, infancy
by guardian.
B. R.
Lill. Ent. 3.

Pract. Reg.
51, 655.

And the said *A.* who is under the age of † one and twenty years, by *R. C.* her guardian, specially admitted by the court of our said lady the now queen here, comes and defends the force and injury, &c. and prays judgment of the said bill, because she says, that she the said *A.* on the day of exhibiting the said bill, was and still is under the age of one and twenty years, that is to say, of the age of nineteen years; and not more, to wit, at *London* aforesaid, in the parish and ward aforesaid; and that the said *H.* prosecuted her said bill against the said *A.* neither by her next friend, nor by her guardian; and this she is ready to verify: Wherefore she prays judgment of the said bill, and that the said bill may be quashed, &c.

Plea, that defendant is administrator and not executor B. R.
Lill. Ent. 5.

* And the said *R.* by *J. L.* his attorney, comes and defends the force and injury, &c. and

† In *indebitatus assumpsit* infancy may be given in evidence on *non assumpsit*. *Darby v. Boucher*, *Salk.* 279. 2 *Lev.* 144. *Salk.* 386. 5 *Mod.* 368. *Aliter* in debt on a bond, he must plead infancy. *Salk.* 279.

* Debt on a bond against *C.* as executrix to *J. S.* Plea, that *J. S.* died intestate, and that administration was granted to the defendant of the goods, &c. of *J. S.* and therefore *petit judicium si ipsa ad billam prædictam respondere debet*. Demurrer, 1st Exception: If the defendant administered the goods of *J. S.* before administration granted to her, she is chargeable as executrix *de son tort*, therefore she ought to have traversed that she meddled

Abatement.

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and says, that the said *J. H.* on the first day of *December* in the year of our Lord 1694. at *London* aforesaid, in the parish and ward aforesaid, died intestate, after whose death, to wit, on the eighth day of the month of *February* in the year of our Lord 1694. at *London* aforesaid, in the parish and ward aforesaid, administration of all and singular the goods and chattels, rights and credits, which were of the said *J. H.* at the time of his death, was in due form of law committed to the said *R. H.* by Sir *C. H.* knt. doctor of *Salk.* 296. 3. laws, commissary and sequestrator general, *Pract. Reg.* 7. lawfully appointed, of the reverend father in Christ *H.* by divine permission, lord bishop of *London*, in the parts of *Essex* and *Hertford*, to whom the commission of the administration of the right appertained: In which case

meddled before as executrix. Answer. 3 *Leon.* 197. and 3 *Cro.* 102. are express, that the plaintiff ought to reply that special matter. Of which opinion was the whole court. *Holt* ch. just. If the defendant had taken such traverse, it had made her plea vitious. 2d Exception: The conclusion of the plea is not in abatement. Answer, cited *Placit. general et special*; tit. *Abatement* 20, 21. But the court denied these cases, and said, that in the present case it is a proper conclusion to the jurisdiction, which is sometimes also, *si curia cognoscere velit*; but it cannot be good in abatement. Judgment *quod respondeat ulterius*. A conclusion in abatement ought to pray judgment *quod billa cassetur*. *Mich.* 7 *W.* 3. *B. R.* *Powers v. Cock.* 1 *R. Raym.* 63. 1 *Salk.* 298. 5 *Mod.* 136. *Carth.* 363. 3 *Danv. Abr.* 414. p. 23. Same judgment on the last point the same term. *Nichols v. Shephard*, *Skin.* 620.

Shatement.

case the said *E.* and *M.* ought to have named the said *R. M.* administrator of the goods and chattels which were of the said *J. H.* and not executor of the testament of the said *J. H.* and this he is ready to verify: Wherefore he prays judgment of the said bill, and that the said bill may be quashed, &c.

*Plea by a feme,
that she is
married.* B. R.
Lill. Ent. 1.
2 Str. 811.
2 Ld. Raym.
1525.
Barnard. K. B.
70.

*Pract. Reg. 8.
Salk. 7, 8.
6 Mod. 230.*

Replication.

Traverse.

And the said *S.* in her proper person comes and prays judgment of the said bill of the said *W.* because she says, that she the said *S.* at the time of the exhibiting the said bill of the said *W.* against the said *S.* was married to one *J. W.* then and yet her husband, and alive, to wit, at *Islington* aforesaid in the county aforesaid; and this the said *S.* is ready to verify: Wherefore for that the said *J. W.* is not named in the said bill, the said *S.* prays judgment of the said bill, and that the said bill may be quashed, &c.

And the said *W.* says, that by any thing by the said *S.* above by pleading alledged the said bill of the said *W.* now filed ought not to be quashed, because he says, that the said *S.* on the said time of exhibiting the said bill, to wit, on the twenty-third day of *October* in the tenth year of the reign of our said lord the now king, to wit, at *Islington* aforesaid in the county aforesaid, was sole; *Without* this, that the said *S.* on the said time of exhibiting the said bill of the said *W.* or at any time afterwards, was married to the said *J. W.* in manner and form as the said *S.* above by pleading has alledged; and this he is ready to verify:

rify : Wherefore he prays judgment, and his said debt, together with his damages by occasion of the detaining that debt, to be adjudged to him, &c.

And the said S. as before says, that she the said S. at the time of exhibiting the said bill of the said W. was married to the said J. W. her husband in manner and form as the said S. above by pleading has alledged; and of this she puts herself upon the country; and the said W. does so likewise, &c. Therefore let a jury, &c.

Rejoinder.

Issue.

BE it remembered, that on *Wednesday* next after fifteen days of *Easter* in this same term, Sir J. H. knt. chief justice of our lord the king, and lady the queen, assigned to hold pleas in the court of our said lord the king and lady the queen, before the said king and queen, freely gave and granted to J. W. esq; the office of filacer in the court of the said king and queen, before the said king and queen, for the county of *Salop*, and then and there admitted the said J. W. to the said office of filacer for the county aforesaid to have and to hold to him as his freehold for term of his life, according to the custom of the said court of our said lord the king and lady the queen at all times past used and approved, and instantly put and set the said J. W. (he having first taken as well the oath of allegiance to our said lord the king and lady the queen, according to the form of the statute in

Grant of the office of filacer in B. R. Lill. Ent. 6.

Abatement.

in that case made and provided, as the oath, according to custom, to behave himself well and faithfully in the said office) into the corporal possession of the said office, to hold, occupy, and have the same in form afore-said, with the fees, wages and profits to the said office belonging, and anciently due and accustomed, &c.

Roll 213.

Holt and Ventris.

Plea, that defendant is filacer of B. R. and suable by bill only.

Salk. 1, 2, 3, 8.

And the said J. in his proper person comes and defends the force and injury, and says, that in *Easter* term in the fifth year of the reign of their late majesties *William* and *Mary*, late king and queen of *England*, &c. to wit, on *Wednesday* next after fifteen days of *Easter* in that same term, Sir J. H. then chief justice of the said late king and queen, assigned to hold pleas in the court of the said late king and queen, before the said late king and queen, freely gave and granted to the said J. W. the office of filacer in the court of the said late king and queen, before the said late king and queen, for the county of *Salop*, and then and there admitted the said J. W. to the said office of filacer for the said county of *Salop*, to have and to hold to him as his freehold for term of his life, according to the custom of the said court of the said late king and queen at all times past used and approved, and instantly put and set the said J. W. (he having first taken as well

well the oath of allegiance to the said late king and queen, according to the form of the statute in that case made and provided, as the oath, according to custom, to behave himself well and faithfully in the said office) in the corporal possession, to hold, occupy, and have the said office in form aforesaid, with all fees, wages and profits to the said office belonging, and anciently due and accustomed, &c. as by the record of the said grant and admission now remaining in the court of our lord the now king before the king himself manifestly appears. By virtue of which said grant and admission he the said J. was filacer of the said court of the said late king and queen, before the said late king and queen, and on the day of suing out the original writ aforesaid, was and still is a filacer of the said court of our said lord the king before the king himself as aforesaid: And the said J. further says, that from the time to the contrary whereof the memory of man is not, such filacers of the said court of our said lord the king here, according to the custom of the said court for the whole time aforesaid hitherto used and approved in the same court, have been used, and ought, in all personal pleas at the suit of any subject of our said lord the king and his predecessors, kings and queens of this kingdom, to be impleaded only by bill exhibited in the court of our said lord the present king before the king himself, against such filacers present in the same court in proper person; and this he is ready to verify: Wherefore he prays judgment,

Copy of the record to be annexed to this plea, affidavit not necessary.

judgment, if the court of our lord the king here will or ought to take further cognizance of the said plea against him the said J. &c.

Ed. Whitaker.

Plea, that defendant is an attorney of C. B. and suable there only. B. R. Lill. Ent. 3.

And the said J. in his proper person comes and says that he is, and on the day of the exhibiting the said bill of the said J. and for divers years before, was one of the attornies of the court of our lady the queen of the Common Bench, imployed, attending in his said office at *Westminster* in the county of *Middlesex*, in prosecuting and defending divers affairs of several subjects of our said lady the queen in that bench as their attorney; and that he the said J. and all other attornies of that bench, while they so prosecute or defend any such affairs, according to the custom in the same court of the bench at *Westminster*, hitherto used and approved, ought not to be drawn or compelled, nor at any times past have been accustomed to be drawn or compelled to answer before any justices or ministers of our lady the queen, or other secular justices whatsoever, except before the justices of our said lady the queen of the Common Bench at *Westminster*, upon any pleas, complaints or demands, which touch not the person of our said lady the queen, (plea of frank-tenement, felonies and appeals only excepted); and this he is ready to verify: Wherefore he does

1 Lev. 54.
Salk. 1, 2, 30,
4, 8, 545.
Pract. Reg.
4, 5, 7.

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does not intend that the court of our lady the queen here will or ought to take cognizance of the said plea against him, &c.

St. John Broderick.

And the said T. C. by J. L. his attorney, comes and defends the force and injury, &c. and prays oyer of the said writing obligatory; and it is read to him in these words, to wit, Know all men by these presents, &c. which being read and heard, the said T. C. prays judgment † of the said declaration, because he says, that at the said time of the sealing and delivering of the said writing obligatory, upon which the said plaintiff complains against him the said T. C. to wit, upon the said third day of May in the eleventh year of the reign, &c. in the said declaration above mentioned, at Lewes aforesaid in the county aforesaid, the said E. F. and G. H. in the said writing obligatory named, also sealed and delivered the said writing obligatory as the act and deed of the said E. F. and G. H. to the said

Plea that others who are not named in the declaration, jointly executed the bond with the defendant.
Lill. Ent. 2.

C

plaintiff,

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† Plea of the same matter, and in the same manner. Demurrer. Judgment for the plaintiff, because this matter was pleaded in bar; whereas it is only a plea in abatement; for a plea which begins with a *petit judicium de narratione*, and concludes *quod narratio cassetur*, is a plea in bar in the King's Bench, and has been so often adjudged. *Hil. 13 Geo. 1. B. R. Watts et ux. v. Goodman*, 2 R. Raym. 1460; *et vide* 2 R. Raym. 1205.

plaintiff, and by the said writing obligatory became firmly bound to the said plaintiff with the said defendant in the said one hundred pounds: Which said *E. F.* and *G. H.* are yet in being and alive, to wit, at *Lewes* aforesaid in the county aforesaid; and this he is ready to verify: Wherefore for that the said *E. F.* and *G. H.* are not named defendants, together with the said defendant in the said declaration mentioned, the said defendant prays judgment *of the said declaration, and that the said declaration may be quashed, &c.*

Plea that another jointly with defendant executed the deed, and jointly covenanted. B. R. Lill. Ent. 7.

And the said *T. D.* by *J. L.* his attorney, comes and defends the force and injury, &c. and prays judgment of the said bill, because he says, that one *P. A.* on the said 26th day of *August* in the year of our Lord 1699. at *London* aforesaid, in the parish and ward aforesaid, subscribed, sealed, and as his deed delivered to the said *J. B.* the said charter-party indented of affreightment in the said bill above mentioned, and that the said *P. A.* and the said *T.* by the said charty-party indented of affreightment, jointly covenanted, granted and agreed to and with the said *J. B.* his executors, administrators and assigns, in manner and form as in the said bill of the said *J.* is above recited: Wherefore for that the said *P. A.* is not named in the said bill, the said *T. D.* prays judgment of the said bill, and that the said bill may be quashed, &c.

And

And the said T. in his proper person comes *Plea, another*
 and defends the force and injury, &c. and *action pending*
 prays judgment of the said bill, because he *for the same*
 says, that the said J. in the court of our said *matter in the*
 lady the now queen here, heretofore, to wit, *same court.*
 in *Easter* term last past brought his writ a- *Lill. Ent. 2.*
 gainst the said T. of the plea aforesaid; and *Salk. 8, 715.*
 thereupon the said J. by declaring against the *Pract. Reg. 7.*
 said T. by the name of T. I. late of *London*, *5 Rep. 51.*
 gent. then and there appearing at the suit *Meacock v.*
 of the said J. of the plea aforesaid, com- *Farmer cited.*
 plained, That whereas the said J. M. on the *1 R. Raym.*
 first day of *April* in the year of our Lord 1701. *117.*
 at *London* in the parish of *St. Mary le Bow* in *Recital of de-*
 the ward of *Cheap*, was possessed of divers *claration in*
 goods and chattels, to wit, of two butts of *trover.*
 brandy of the value of 150 l. as of his own
 proper goods and chattels; and being so pos-
 sessed thereof casually lost the said goods and
 chattels out of his lands and possession; which
 said goods and chattels afterwards, to wit, on
 the said first day of *April* in the said year of
 our Lord 1701. aforesaid, at *London* aforesaid,
 in the parish and ward aforesaid, came by
 finding to the hands and possession of the said
 T. yet the said T. knowing the said goods and
 chattels to be the proper goods and chattels of
 the said J. M. and to him the said J. M. of
 right to belong and appertain, but contriving
 and fraudulently intending craftily and sub-
 tilly to deceive and defraud the said J. M. of
 those goods and chattels, did not deliver the
 said goods and chattels to the said J. M. al-
 though

though often required; but afterwards, to wit, on the tenth day of *November* in the year of our Lord 1701. aforesaid, at *London* aforesaid, in the parish and ward aforesaid, converted and disposed the said goods and chattels to his own proper use, to the damage of the said *J. M.* of one hundred and twenty pounds; and thereupon he then brought suit,

Of defendant's appearing.

Imparling.

Plea still pending.

Averment, that the persons and cause of action are the same.

Ec. And the said *T. I.* by *A. B.* his attorney, came and defended the force and injury, when, *Ec.* and then prayed leave to imparle thereto here, until on the morrow of the Holy *Trinity* then next following, and had it, *Ec.* The same day was then given to the said *J. M.* here, *Ec.* as by the said record remaining here in court more fully appears: Which said plaint or plea upon the writ aforesaid, in form aforesaid prosecuted in the said court of our said lady the now queen here, to wit, at *Westminster* aforesaid, still depends undiscussed, undetermined, and not discontinued: And the said *T.* further says, that the said *J. M.* in the said former declaration and plea named, and the said *J. M.* in the said bill now exhibited against him the said *T. I.* are one and the same person, and not other, nor different; and that the said *T. I.* in the said former declaration and plea named, and the said *T. I.* in the said bill against him the said *T. I.* exhibited, are one and the same person, and not other, nor different: And the said *T. I.* further says, that the goods and chattels in the declaration and plea mentioned and the said goods and chat-

tels mentioned in the said bill now exhibited against the said T. are one and the same goods and chattels, and not other, nor different; and this he is ready to verify: Wherefore he prays judgment of the said bill exhibited in form aforesaid, (the said former plea and declaration as aforesaid still depending here in court undiscussed and undetermined) and that the said bill may be quashed, &c.

And the said E. D. says, that by any thing by the said O. G. above by pleading alledged, the said bill of the said E. now filed ought not to be quashed, because he says, that there is not any such record of the said bill in the said plea specified, filed or remaining of record in the said court of our said lady the present queen before the queen herself, as the said O. has above by pleading alledged; and this he is ready to verify: Wherefore he prays judgment, and that the said bill of the said E. now filed may be adjudged good, and that the said O. may answer thereto, or in default thereof, that his damages by occasion of the premisses may be adjudged to him, &c.

B. R. Repliation nul tiel record, to a plea of another action for the same matter in the same court.
Lill. Ent. 7.

And the said O. says, that there is such record of the said bill in the said plea of the said O. above specified, filed of record in the said court of our said lady the queen before the queen herself, to wit, at *Westminster* aforesaid, as he the said O. has above by pleading alledged, as appears on the files of bills of the said term of *St. Hilary* last past in the said plea last mentioned, filed of record; and this he is ready to verify by that record: And

Rejoinder
quod habetur tale record.

Abatement.

he prays, that the term and files of bills may be seen and inspected by the court of our said lady the now queen here. *But, &c.* [*Continuance, ut antea.*]

*Demurrer to
the replication.*
Salk. 218,
22, 93, 94.

And the said *O.* says, that the said plea by the said *E.* above by replying pleaded, and the matter therein contained, are not sufficient in law to compel the said *O.* to answer to the said bill of the said *E.* to which the said *O.* has no need, nor is he bound by the law of the land in any manner to answer; and this he is ready to verify: Wherefore for default of a sufficient replication of the said *E.* in this behalf, the said *O.* as before prays judgment of the said bill, and that the said bill may be quashed, *&c.*

Joinder.

And the said *E.* says, that the said plea by him the said *E.* in manner and form afore-said above by replying pleaded, and the matter therein contained, are good and sufficient in law to compel the said *O.* to answer to the said bill of the said *E.* Which said plea, and the matter therein contained, the said *E.* is ready to verify and prove, as the court, *&c.* And because the said *O.* does not answer the said plea, nor has yet any ways denied it, the said *E.* prays judgment, and that the said bill of the said *E.* may be adjudged good, *&c.* And that the said *O.* may answer further thereto, *&c.* or in default thereof, that his damages by occasion of the premisses may be adjudged to him, *&c.* *But, &c.* [*Continuance ut antea.*]

And

And now at this day, to wit, on *Wednesday* *Special impar-*
 next after fifteen days of *Easter* in the same *lance*.
 term, to which day the said *H.* saving to him-
 self all and all manner of exceptions to the said
 bill of the said *E.* had leave to imparle to the
 said bill, and to answer, &c. before which *Demise of*
 day her majesty queen *Mary* died, before our *queen Mary*.
 said lord the king at *Westminster* came as well
 the said *E.* by his attorney aforesaid, as the
 said *H.* by *R. S.* his attorney; and the said
H. defends the force and injury, &c. and says, *Plea lis alibi*
 that he the said *H.* ought not to be compelled *pendens. B. R.*
 to answer the said bill, because he says, that *Lill. Ent. 7.*
 the said *E.* heretofore, to wit, in the term of
 the Holy *Trinity* last past, in the court of our
 lord the present king and of the late queen
Mary of the bench impleaded the said *H.* in
 a certain plea of trespass upon the case, and
 for the same cause in the said declaration *Salk. 715.*
 above mentioned, as by the record thereof
 remaining in the same court appears, and
 that the said parties to and in the plea in the
 said court of the bench, and the said *E. B.*
 the present plaintiff, and he the said *H. D.*
 are the same persons, and not other or di-
 vers; and that the said plea in the said court
 of the bench still remains undetermined; and
 this he is ready to verify: Wherefore he
 prays judgment, if he ought to be compelled
 to answer to the said bill, &c.

And the said *E.* says, that notwithstanding *Replication*
 any thing by the said *H.* above by pleading *nul tiel re-*
 alledged, he the said *H.* ought to be com- *cord.*
 pelled to answer to the declaration of him the

said *E.* because he says, that there is not any such record of the impleading the said *H.* at the suit of the said *E.* remaining in the said court of our said lord the king of the bench, as the said *H.* has above by pleading alledged, and this he is ready to verify: Wherefore he prays judgment, and that the said *H.* may answer to the bill of the said *E.* &c.

Plea to a sci. fa. quare executionem non in error, that there are not 15 days between the teste and return.
Lill. Ent. 9.

And the said *N.* at that day being solemnly demanded, by *T. C.* his attorney, also comes and prays judgment of the said writ of *scire facias*, because he says, that there are not fifteen days between the teste and return of the said writ of *scire facias*; and this he is ready to verify: Wherefore he prays judgment of that writ, and that the said writ may be quashed, &c.

Demurrer.

And the said *M.* says, that by any thing by the said *N.* above by pleading alledged the said writ of the said *M.* ought not to be quashed, because he says that the said plea by the said *N.* in manner and form aforesaid above pleaded, and the matter therein contained, are not sufficient in law to quash the said writ of the said *M.* against the said *N.* to which said plea in manner and form aforesaid pleaded the said *M.* has no need, and is not bound by the law of the land in any manner to answer; and this he is ready to verify: Wherefore for default of a sufficient plea of the said *N.* in this behalf, the said *M.* prays judgment and his execution, according to the force,

force, form, and effect of the said recovery to be adjudged to him.

And the said N. says, that the said plea by Joinder. him the said N. in manner and form aforesaid above pleaded, and the matter therein contained, are good and sufficient in law to quash the said writ of the said M. against him the said N. which said plea, and the matter therein contained, the said N. is ready to verify and prove, as the court, &c. And because the said M. does not answer the said plea, nor as yet has any ways denied it, the said N. as before prays judgment, and that the said writ may be quashed, &c. But, &c. [Continuance, ut antea.]

And the said C. F. by J. L. his attorney, Plea to a sci. comes and prays judgment in the said writ of fa. a writ of scire facias, because he says, that after rendering the said judgment in the said writ error return-able in the Exchequer chamber. above specified, to wit, on the sixteenth day of November in the sixth year of the reign of Lill. Ent. 3. our sovereign lord William the third, now Pract. Reg. 5, 6. king, and our sovereign lady Mary late queen of England, at Westminster aforesaid in the county of Middlesex aforesaid, he the said C. F. for reversing the said judgment prosecuted out of the court of Chancery of our said lord the king and lady the late queen then held at Westminster aforesaid in the county of Middlesex, a certain writ of our said lord the king and lady the late queen for correcting errors of and upon the said judgment in the said writ specified, directed to Sir John Holt, knt.

knt. chief justice of our said lord the king and lady the late queen, assigned to hold pleas in the court of our said lord the king and lady the late queen, before our said lord the king and lady the late queen, and returnable on *Tuesday* the twenty-seventh day of this inst. *November* then next ensuing, in the court of *Exchequer* chamber of our said lord the king and lady the late queen at *Westminster*, before the justices of our said lord the king and lady the late queen of the bench, and barons of the *Exchequer* of our said lord the king and lady the late queen, of the degree of the coif, according to the form of the statute in such case made and provided; which said writ, after the issuing and before the return thereof, to wit on the twentieth day of *November* in the said sixth year of the reign of the said king and queen at *Westminster* aforesaid in the said county of *Middlesex*, was in due form of law delivered to the said Sir *John Holt* the said chief justice, to be executed in form of law, which said Sir *John Holt* the said chief justice has not yet returned the said writ for correcting the said errors into the said *Exchequer* chamber, and has done nothing thereupon; and this he is ready to verify: Wherefore he prays judgment, if he the said *C.* ought to be compelled to answer to the said writ of *scire facias* of the said *C. N.* pending the said writ of error undetermined, &c.

And

And the said J. F. by J. S. his attorney, *Plea, a writ comes and defends the force and injury, &c. of error depending in the Exchequer chamber. B.R. Lill. Ent. 11.* and prays judgment of the said bill of the said R. D. because he says, that after the giving the said judgment in the said declaration specified, and before the exhibiting the bill of the said R. D. to wit, on the twenty-ninth day of *October* in the seventh year of the reign of our lord the present king, the said J. F. for reversing the said judgment sued forth of the court of *Chancery* of our said lord the king, the same court being then at *Westminster*, a certain writ of our said lord the present king, for correcting errors in the record and process, and also in giving that judgment directed to the king's right trusty and well-beloved Sir *John Holt*, knt. then and still chief justice of our said lord the king assigned to hold pleas before the king himself; by which said writ our said lord the king commanded his said chief justice, that if judgment was thereupon then given, then he should cause the record and process of the said plaint, with all things touching the same, to come before his justices of the common bench and his barons of the *Exchequer* of the degree of the coif in the *Exchequer* chamber of our said lord the king at *Westminster*, on *Wednesday* the twenty-seventh day of *November* then next ensuing, that the said justices of the Common Bench and barons viewing and examining the said record and process might cause further to be done therein,

as

Abatement.

as of right and according to the form of the statute in that case made and provided should be meet to be done; by virtue of which said writ of error the said chief justice afterwards, to wit, on the said twenty-seventh day of *November* transmitted the record and process of the plaint and judgment aforesaid, with all things touching the same, before the justices of our said lord the king of the common bench and his barons of the *Exchequer* of the degree of the coif in the said *Exchequer* chamber at *Westminster* aforesaid: And the record and process of the said judgment still remains there, and the said writ for correcting errors still remains undetermined in the same court of the said *Exchequer* chamber at *Westminster* aforesaid; and the said judgment is yet neither affirmed nor reversed, as by the record thereof remaining in the same court of the said *Exchequer* chamber at *Westminster* aforesaid before the said justices of our said lord the king of the Common Bench and barons aforesaid more fully appears; and this the said *J. F.* is ready to verify by the record of the judgment and process aforesaid: Wherefore he prays judgment of the said bill, and that the said bill may be quashed, &c.

*Edward Northey,
St. John Broderick.*

Middlesex,

Middlesex, J. C. complains of J. H. in the Declaration to wit, J. custody of Sir R. D. bart. chief against a prisoner in the custody of the liberty of St. Edmund's Bury in the county aforesaid, of a plea that he render to him 100l. [Declaration in debt on a bailiff of a liberty. judgment] And thereupon he brings suit, &c.

And the said J. by J. A. his attorney, Plea, misprison of the comes and defends the force and injury, and says, that the liberty of St. Edmund's Bury is, Lill. Ent. 4. and was from the time to the contrary whereof the memory of man is not, in the county of Suffolk, and not in the county of Middlesex, as by the bill of the said J. C. is above supposed; and this he is ready to verify: Wherefore he prays judgment, if he the said J. H. ought to answer to the bill of the said J. C. &c.

L. S. gent. maketh oath, That the liberty of St. Edmund's Bury, as the deponent is credibly informed and verily believes, is in the county of Suffolk, and not in the county of Middlesex, as the plaintiff by his declaration hereunto annexed hath alledged. Affidavit of the truth of the plea. Stat. 4 & 5 Annæ.

L. S.

And the said R. by T. H. his attorney, Plea, false latin in the comes and defends the force and injury, and prays oyer of the said writing; and it is read to him in these words, to wit, Noverint universi me, &c. teneri, &c. in ducent' & quinquaginti' B. R. Lill. Ent. 5.

Abatement.

Hob. 18, 19,
20.
Salk. 462.
Pract. Reg.
146.

quagint' libris, &c. [the obligations set forth at length.] He also prays oyer of the condition of the said writing, and it is read to him in these words, to wit, The condition, &c. which being read and heard the said R. prays judgment of the said bill, because he says, that the said J. by his bill above supposes that the said R. owes to the said J. *ducent' & quinquagint' libras*, where in truth there is not any such word in the said writing, containing and warranting this word in the said declaration specified; and this he is ready to verify: Wherefore he prays judgment of the said bill, and that the said bill may be quashed, &c.

Plea in abatement, misnomer in the defendant's christian name,
B. R.
Lill. Ent. 6.
Pract. Reg. 199.
Carth. 207.

Traverse.

And Carolinus Smith, against whom the said *Richard Griggs* by his bill exhibited complaineth by the name of *Charles Smith*, by J. A. his attorney cometh and defendeth the force and injury, &c. and prayeth judgment of the said bill, because he saith that he was baptized by the name of *Carolinus*, and by the same name from the time of his baptism hitherto hath been always known and named by the name of *Carolinus**; *without this*, that he the said *Carolinus* now is or ever was known or named by the name of *Charles*, as by the said bill is above supposed; and this he

* The traverse is material, for one may have a *Nomen* and *Cognomen* that never was baptized. Salk. 6. 6 Mod. 115. Holt 492, 563.

Abatement.

31

he is ready to verify : Wherefore he prayeth judgment of the said bill, and that the said bill may be quashed, &c.

Martha Hinton widow complaineth of *James Alibam* and *Anne* his wife, otherwise called *Anne Jesson*, of the city of *Coventry* spinster, in the custody of the marshal, of a plea that they render to her 400 l. (on a bond made by the feme *dum sola*.)

And the said *James* and one — his wife — come in their proper persons and defend the force and injury, and say that she the same — was baptized by the name of — and is, and from the time of her nativity hitherto was always known and named by the name of — ; *without this*, that she the same — now is, or ever was known or named by the name of *Anne*, as by the said bill is supposed ; and this they are ready to verify ; Wherefore they pray judgment of the said bill, and that the said bill may be quashed, &c.

T. L.

And lady *Honoriam Gerard*, against whom the said *Thomas* hath exhibited his bill by the name of lady *Elizabeth Gerard*, otherwise *Garret*, cometh in her proper person and defendeth the force and injury, &c. and prayeth judgment of the said bill, because she saith that she was baptized by the name of *Honoriam*, to wit, at the parish of *St. Clement Danes* aforesaid, and from her baptism

Plea in abatement, misnomer in the defendant's christian name.
B. R.
M. 5 Ann.
Ro. 439.
Salk. 8, 712.
Carth. 207.
Lib. Placit. 1.

Traverse.

to this time has always been known and named by that name; *without this*, that the said *Honoria* now is or ever was known or named by the name of *Elizabeth*, as by the said bill is above supposed; and this she is ready to verify: Wherefore she prayeth judgment of the said bill, and that the said bill may be quashed, &c.

*imparlance to
a plea.*

And the said *Thomas Stroud* prayeth day to imparle to the said plea; and it is granted to him, &c. And, upon this, day is thereupon given to the parties aforesaid, before our lady the queen at *Westminster*, until *Thursday* next after the octave of *St. Hilary*, to wit, to the said *Thomas* to imparl to the said plea, and then to reply, &c. At which day, before our lady the queen at *Westminster*, cometh as well the said *Thomas Stroud* by his attorney aforesaid, as the said defendant in her proper person. And the said *Thomas* prayeth day to imparl further to the said plea; And it is granted to him, &c. And, upon this, day is thereupon further given to the said parties, before our lady the queen at *Westminster*, until *Wednesday* next after fifteen days from the day of *Easter*, to wit, to the said *Thomas*, to [*Verbatim ut antea, usque*] her proper person. And the said *Thomas* saith, † that the said lady *Gerard*,

*Further
imparlance.*

*Replication,
estoppel the
defendant put
in bail by the
name of Eli-
zabeth.*

† The putting in bail is the act of the court, and not of the party, and therefore cannot estop her; but the defendant

Gerard, otherwise *Garret*, the person against whom the said *Thomas* hath exhibited his said bill by the name of lady *Elizabeth Gerard*, otherwise *Garret*, ought not to be admitted to her said plea for quashing the said bill of the said *Thomas*, because he saith, that she the said lady *Gerard*, otherwise *Garret*, the person against whom the said *Thomas* in the term of *St. Michael* last past exhibited his said bill by the name of lady *Elizabeth Gerard*, otherwise *Garret*, in the same term of *St. Michael* put in common bail in the court here, at the suit of the said *Thomas*, in the plea aforesaid, by the name of lady *Elizabeth Garret*, as by the record thereof remaining in the same court of our said lady the queen, before the queen herself at *Westminster*, more fully appeareth; and this he is ready to verify by that record; Wherefore he prayeth judgment if the said lady *Gerard*, otherwise *Garret*, the person against whom the said *Thomas* hath exhibited his said bill, by the name of lady *Elizabeth Gerard*, otherwise *Garret*, ought to be admitted

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ted

defendant appearing by that name, may estop himself, and bail is an appearance as well as bail: But then it ought to be pleaded as an appearance, if the plaintiff would make use of that as an estoppel. In debt on a bail-bond, if the defendant has put in common bail, he cannot plead he has put in common bail, but *comperuit ad diem*, for he must plead according to the operation things have in law. *Salk.* 8.

ted to her said plea for quashing his said bill, contrary to the said record, &c.

*Demurrer to
the replication.*

And the said *Honorio Gerard*, against whom the said *Thomas* has exhibited his said bill by the name of lady *Elizabeth Gerard*, otherwise *Garret*, saith, that the said plea above in replying pleaded by the said *Thomas* in manner and form aforesaid, and the matter therein contained, are not sufficient in law to compel the said *Honorio* to answer the said bill of the said *Thomas*; to which said plea the said *Honorio* hath no need, nor is she obliged by the law of the land in any manner to answer; and this she is ready to verify; Wherefore, for want of a sufficient replication in this case, the said *Honorio*, as before, prayeth judgment of the said bill, and that the said bill may be quashed, &c.

Joinder.

And the said *Thomas* saith, that the said plea above in replying pleaded by the said *Thomas* in manner and form aforesaid, and the matter therein contained, are good and sufficient in law to compel the said *Elizabeth* to answer to the said bill of the said *Thomas* thereupon against the said *Elizabeth*; which said plea, and the matter therein contained, the said *Thomas* is ready to verify and prove, as the court, &c. And because the said *Elizabeth* hath not answered to the said plea, nor hitherto in any manner denied the same, the said *Thomas* as before prayeth judgment, and that the said *Elizabeth* may be compelled to answer to the said bill of the said *Thomas*, &c. But because the court of our said lady

Continuance.

the queen now here is not advised about giving judgment of and concerning the premisses, day is therefore given to the said parties to come before our lady the queen at *Westminster*, until — next after —, to hear judgment of and upon the same premisses, for that the court of our said lady the queen now here is not advised thereof.

And the said *Thomas Woods* and *Mary* his wife, by *Richard Ash* their attorney, come and pray oyer of the said original writ, and of the return of the said writ; and they are read to them in these words, to wit, *Anne* by the grace of God [The writ and return *in hac verba*] Which being read and heard, the said *Thomas Woods* and *Mary* his wife pray judgment of the said writ, because they say that by form of the statute the addition of the town or hamlet, or place and county of the dwelling of the said *Thomas*, ought to be contained in the said original writ of the said *Charles* earl of *Banbury*, and *Mary* countess of *Banbury* his wife; and this they are ready to verify: Wherefore, for that such addition is not contained

D 2 in

* The original replevin is *Vicountie*, and the court proceeds upon the *Pluries*: Therefore the first replevin needs no addition within the statute; and where the first writ is without addition, it cannot be necessary in the second; nay, the inserting such an addition would vitiate the second writ, for it cannot vary from the former. *Salk.* 5.

Demurrer.

in the same writ, the said *Thomas* and *Mary* pray judgment of the said writ, and that the said writ may be quashed, &c.

And the said *Charles* earl of *Banbury*, and the said *Mary* countess of *Banbury* his wife, say, that by any thing by the said *Thomas* and *Mary* above pleaded for quashing the said writ, the writ of the said earl and countess ought not to be quashed, because they say that the said plea above pleaded by the said *Thomas* and *Mary* his wife, in manner and form aforesaid, and the matter therein contained, are not sufficient in law to quash the said writ of the said earl and countess; to which said plea the said earl and countess have no need, nor are they obliged by the law of the land, in any manner to answer; and this they are ready to verify. Wherefore, for want of a sufficient plea of the said *Thomas* and *Mary* in this case, they the said earl and countess pray judgment, and that the writ of the said earl and countess may be adjudged good, and that the said *Thomas* and *Mary* may answer further to the said writ, &c.

Joinder.

And the said *Thomas* and *Mary* his wife say, that the said plea above pleaded by the said *Thomas* and *Mary*, in manner and form aforesaid, and the matter therein contained, are good and sufficient in law to quash the said writ of the said earl and countess; which said plea, and the matter therein contained, they the said *Thomas* and *Mary* are ready to verify, as the court, &c. And because the said

said earl and countess have not answered to the said plea, nor as yet any ways denied the same, the said *Thomas* and *Mary*, as at first, pray judgment of the said writ, and that the said writ may be quashed, &c. *But* because the court of our said lady the queen now here is not yet advised about giving judgment of and concerning the premises, day is therefore given to the said parties to come before our lady the queen until ——— wheresoever, &c. to hear judgment of and upon the same premises, for that the court of our said lady the queen now here is not yet advised thereof.

Continuance.

And the said *Simon Winch*, by *John Sandwell* his attorney, cometh and saith, that the tenements in the said declaration above specified are, and from the time to the contrary whereof the memory of man is not, have been parcel of the manor of *Bray* in the county aforesaid, of which said manor our lord the king and lady the queen are seised in right of their crown; and that the said manor is of the ancient demesne of the crown of our lord the king and lady the queen;

Plea in abatement in ejectment, that the lands are parcel of the manor of B.

which is ancient demesne.

B. R.

Salk. 56, 775.

D 3

and

* *Per cur.* Supposing the manor to be ancient demesne, yet the manor and the demesnes of the manor are impleadable at common law, and not in the lord's court, for then the lord would be judge in his own cause. But ancient demesne lands, held of the manors, are impleadable in the court of ancient demesne, and there only. *Salk. 56. Vide F. N. B. 11. m. 1 Roll. 324.*

Abatement.

and that the said tenements are impleadable and have been impleaded, from the time to the contrary whereof the memory of man is not, in the court of the said manor by the small writ of our lord the king and lady the queen of right close; and this he is ready to verify, as the court shall consider, &c. Wherefore he prayeth judgment if the court of our lord the king and lady the queen here will take cognizance of the plea thereupon, &c.

Demurrer.

And the said *Thomas Barker* saith, that by any thing by the said *Simon Winch* in pleading above alledged, the court of our lord the king and lady the queen here ought not to be barred from having cognizance of the said plea, because he saith that the said plea above pleaded by the said *Simon* in manner and form aforesaid, and the matter therein contained, are not sufficient in law to bar the said court of our lord the king and lady the queen now here from having cognizance of the said plea; to which said plea, and the matter therein contained, the said *Thomas Barker* has no need, nor is he obliged by the law of the land in any manner to answer; and this he is ready to verify: Wherefore, for want of a sufficient answer in this case, the said *Thomas* prayeth judgment, and his said term yet to come of and in the tenements aforesaid, with the appurtenances, together with his damages by occasion of the trespass and ejectment of farm aforesaid, to be

be adjudged to him, &c. And for causes *Causes of de-*
of demurrer in law upon the said plea, the *murrer do not*
said *Thomas*, according to the form of the *say the lands*
statute in such cases lately made and pro- *are held of the*
vided, sheweth and demonstrateth to the *manor of B.*
court here these causes following, to wit, for
that the said *Simon* hath not in his said plea
shewed to the court here, nor alledged that
the said tenements, with the appurtenances
mentioned in the said declaration, or any
parcel of them, are held of our said lord and
lady the present king and queen, of their
manor of *Bray* aforesaid, and because the
said plea is uncertain, insensible, and wants
form.

And the said *Simon* saith, that the said plea *Joinder.*
above pleaded by him the said *Simon* in man-
ner and form aforesaid, and the matter therein
contained, are good and sufficient in law to
bar the said court of our lord the king and
lady the queen now here from having cogni-
zance of the said plea; which said plea, and
the matter therein contained, he the said *Si-*
mon is ready to verify and prove, as the court,
&c. And because the said *Thomas* hath not
answered to the said plea, nor as yet any ways
denied the same, he the said *Simon* as at first
prayeth judgment if the court of our said
lord the king and lady the queen now here,
will or ought to take cognizance of the said
plea. But because [Continuances to in Craft. *Continuances.*
Animar] At which day before our lord the
king and lady the queen at *Westminster* the
said parties come by their attornies aforesaid.

*Judgment,
Respondens
ouster.*

*Plea, Not
guilty.*

Issue.

*Venire facias
by original
awarded.*

*Plea in abate-
ment to tris-
pass, that one
of the defen-*

Whereupon the court of our said lord the king and lady the queen now here having seen and fully understood all and singular the premisses, and having maturely deliberated thereupon, for that it appeareth to the court of our said lord the king and lady the queen now here, that the said plea above pleaded by the said *Simon* in manner and form aforesaid, and the matter therein contained, are not sufficient in law to bar the said court of our said lord the king and lady the queen now here from having cognizance of the said plea, the said *Simon* is bid by the court to answer further to the declaration. *Whereupon* the said *Simon*, being solemnly demanded, by the said *John Sandwell* his attorney cometh and defendeth the force and injury when, &c. and saith, that he the said *Simon* is in nothing guilty of the trespass and ejectment aforesaid as the said *Thomas* above complaineth against him; and of this he putteth himself upon the country. And the said *Thomas* doth so likewise, &c. Therefore it is commanded to the sheriff that he cause to come before our lord the king and lady the queen, on the octave of the purification of the blessed *Mary*, wheresoever, &c. twelve, &c. by whom, &c. and who neither, &c. to take cognizance, &c. because as well, &c. The same day is given to the parties aforesaid, at the same place, &c.

And the said *Magaret* and *Mary* in their proper persons come and defend the force and injury, &c. and pray judgment of the said

said bill of the said *Rebecca*, and that the said bill may be quashed, because they say that the close and yard, and also the places in which the said trespass is supposed to be done, are, and at the said time in which, *£s.* were one acre of land; and * that the said *Rebecca*, at the said time in which, *£s.* had nothing in the same acre of land, unless together in common, and as undivided, with the said *Mary Bonner*, † who is alive at the parish of *Stepney* in the county of *Middlesex*; And this they are ready to verify: Wherefore they pray judgment of the said bill, and that the said bill may be quashed, *£s.*

And the said *Rebecca* saith, that the said bill of her the said *Rebecca* ought not to be quashed for the reason before alledged, because she saith, that at the several times the said several trespasses are supposed to be done, she was sole seised of the said close and yard in the said declaration of the said *Rebecca* first mentioned, and also of the said close and yard in the said declaration of the said *Rebecca*

dants is tenant in common with the plaintiff. B. R. Salk. 4, 708.

Replication, sole seised.

* In trespass, the defendant cannot plead in abatement, that he himself is tenant in common with the plaintiff, because he may give it in evidence; but on the other side he may plead, that another is tenant in common with the plaintiff, for that will not prove him not guilty. *Salk. 4.*

† Where ever jointenancy is pleaded in abatement, the life of the other jointenant not named is averred in the plea, otherwise the plea is ill. *Salk. 32. 1 Saund.*

Rebecca secondly mentioned, and of the said well in the said declaration also mentioned, and also of the third yard in the said declaration of the said *Rebecca* thirdly mentioned; and that the said *Margaret* and *Mary* at the said several times in which, &c. did the several trespasses aforesaid, as the said *Rebecca* by her said declaration above complaineth against them: † *Without this*, that the said *M. B.* at the respective times aforesaid, or at any of them, had any thing in the said premisses, or any of them: and she prays that this may be inquired of by the country.

Traverse.

Demurrer.

Causes of demurrer.

And the said *M.* and *M.* say [*prout* &c.] may be quashed. And for causes of demurrer in this case, according to the form of the statute in such case lately made and provided, the said *M.* and *M.* shew to the court here these causes following, for that the said plea of the said *R.* is double, uncertain, and wanteth form, and concludeth to the country.

Joinder.

Continuance.

And the said *Rebecca* saith [*prout antea usque*] prayeth judgment, and that the said *M.* and *M.* may answer further to the said bill of the said *R.* But because [*ut antea.*]

In

† Whether the plaintiff should not have concluded his *absque hoc* with an averment? And the court seemed to think, that where an *absque hoc* comprizes the whole matter generally, as *absque tali causa*, it may conclude, & *respondeas ouster* awarded.

Abatement.

43

In the *King's Bench*.

Between } C. D. plaintiff,
 } A. B. defendant.

A. B. the defendant in this cause maketh oath, that the substance and matter of fact in the plea hereunto annexed is true.

Stat 4 & 5 *Anna*, c. 16.

Affidavit of the truth of a plea in abatement. Lill. Ent. 1.

Accompt.

London, *N.* *A.* and *T. L.* wardens of the parochial church of *St. Katherine* *Coleman-street London*, complain of *T. T.* late warden of the said parochial church, being in the custody of the marshal, &c. of a plea, that he render to them his reasonable accounts for the time in which he was warden of the said parochial church, and receiver of the money of the said parochial church; *For that, to wit*, that whereas the said *T. T.* from the 10th day of *April* in the year of our lord 1675, until the first day of *April* in the year of our lord 1676, at *London* aforesaid, to wit, in the parish, &c. in the ward of *A. London*, was warden of the said church, and receiver of

B. R. Declaration in accompt by churchwardens against a late churchwarden. Lill. Ent. 12.

Cro. Jac. 234.
 Pract. Reg.
 267. 680. 30,
 34.

Breach.

of the money of the said parochial church for the time aforesaid, and had the care and administration of the goods and money of the said parochial church for the time aforesaid, and during that time at *London* aforesaid in the parish and ward aforesaid, as warden of the said church, received by the proper hands of him the said *T. T.* 100*l.* of lawful money of *England*, of the money of the said church, to bestow and lay out to the use of the said parochial church, and to render his reasonable account of the same to the said *N. A.* and *T. L.* wardens of the said church, when he should be thereto required: *Yet* the said *T. T.* although often required, &c. has not rendered his reasonable account of that money to the said *N. A.* and *T. L.* or to either of them; but he has hitherto intirely refused and still does refuse to render the same to the said *N.* and *T.* to the damage of the said *N.* and *T.* 100*l.* and thereupon they bring suit, &c. See *Plea* title *Abatement*.

B. R. Declaration in account against a guardian and bailiff.
 Pas. 13 W. 3.
 Lill. Ent. 13.
 1 Vent. 105.
 Salk. 9.

1 Count as guardian.

D. — C. T. gent. complains of *J. T.* to wit, *C.* gent. being in the custody of the marshal, &c. of a plea that he render to him his reasonable account for the time in which he was guardian of the said *C.* and also for the time in which he was bailiff of the said *C.* at *Swanwicks* in the parish of *Alfreton* in the county aforesaid, *For that*, to wit, that whereas it is provided by the common council of our lord the king of *England*, that the

the guardians of lands and tenements which are holden in socage, shall render to the heirs of those lands and tenements, when they shall come to full age, their reasonable account of the issues coming from those lands and tenements for the time in which they had that guardianship, by reason of the minority of the said heirs, the said J. although often required, &c. has not rendered to the said C. his reasonable account of the issues coming of the lands and tenements of the said C. to wit, of two mesuages, three cottages, five gardens and eighty acres of land, thirty acres of meadow, eighty acres of pasture and thirty acres of wood, with the appurtenances in *Swanwiche* aforesaid in the parish of *Alfreton* aforesaid in the county aforesaid, of which said premises the said J. had the guardianship, to wit, from the sixth day of *January* in the year of our Lord 1684. until the 20th day of *July* in the year of our Lord 1691. (the said C. during the whole time being under the age of fourteen years) and during all that time received the issues and profits of the said mesuages and tenements, but has hitherto refused and still does refuse to render to him the said account; And also whereas the said J. afterwards, to wit on the 20th day of *July* in the year of our Lord 1691. aforesaid, at *Swanwiche* aforesaid in the said parish of *Alfreton* in the county aforesaid, was bailiff of the said C. of two mesuages, three cottages, five gardens, and eighty acres of land, thirty acres of meadow, eighty acres of pasture, and thirty acres of wood,

2 Count
bailiff.

wood, with the appurtenances in *Swanwicke* aforesaid in the said parish of *Alfreton* in the county aforesaid, from the said 20th day of *July* in the year of our Lord 1691. until the 7th day of *October* in the year of our Lord 1698. and had and received the yearly profits thereof for that whole time, to render a reasonable account thereof to the said *C.* when he should be required; yet the said *J.* although often required, &c. has not yet rendered the said reasonable account to the said *C.* but he has hitherto intirely refused and still does refuse to render the same to him, to the damage of the said *C.* of 15,000 *L.* And thereupon he brings, suit, &c.

B. R. Declaration in account by executors of a merchant against his factor as bailiff.
Lill. Ent. 13.

Middlesex, J. T. the younger, and *J. F.* executor to wit, *J.* executors of the testament and last will of *J. T.* the elder, deceased, complain of *H. L.* merchant, being in the custody of the marshal, &c. of a plea that he render to them a reasonable account for the time in which he was bailiff of the said *J. T.* the elder, and receiver of the money of the said *J.* in his life-time at *Westminster* in the country aforesaid; For that, to wit, that whereas the said *H.* on the tenth day of *May* in the thirty-first year of the reign of our sovereign lord *Charles* the second now king of *England*, &c. until the thirtieth day of *September* in the thirty-second year of the reign of our said lord the present king at *Westminster*, in the county aforesaid, was bailiff of the said *J.* the testator in his life-time, and for that whole time having

having the care and management of divers goods and chattels of the said *J. T.* the elder, to wit, of two thousand pounds weight of tin, thirty firkins of stub-nails, two hundred and twenty-four pounds weight of mixed metal called *Spelter*, forty pounds weight of lead, and five hundred and fifty pounds weight of other mixed metal called *tunie* glass, to the value of 3000*l.* to wit, at *Westminster* afore said in the county afore said, to merchandize and make profit thereof for the said *J. T.* the elder, and to render a reasonable account thereof to the said *J. T.* the elder, when he should be thereupon required, and was receiver of the money of the said *J. T.* the elder for the whole time afore said, and during this time received of the money of the said *J. T.* the testator at *Westminster* afore said, by the hands of *P. P.* 113*l.* 0*s.* 5*d.* and there by the hands of *P. C.* 9*l.* and there by the proper hands of the said *H. L.* 660*l.* of lawful money of *England*, to render a reasonable account thereof to the said *J. T.* the testator, when he should be thereto required: Yet the said *H. L.* although often *Breach.* required, &c. has not rendered the said reasonable account to the said *J. T.* the elder in his life-time, or to the said *J. T.* the younger, and *J. F.* or to either of them, after the death of the said *J. T.* the testator; but intirely refused to render the same to the said *J. T.* the testator in his life-time, and to the said *J. T.* the younger and *J. F.* after the death of the said *J.* the testator, and still refuses to render

Profert of the
Probate.

render the same to the said *J. T.* the younger
and *J. E.* or to either of them, to the damage
of the said *J. T.* the younger and *J. E.* of
10,000. And thereupon they bring suit, &c.
And the said *J. T.* the younger and *J. E.*
bring here into court the latest testamentary
of the said *J. T.* the elder, by which it suffi-
ciently appears to the court here, that the said
J. T. the younger, and *J. E.* are executors of
the testament of the said *J. T.* the elder, and
thereof have the administration, &c.

Hil. 18 Geo. 2.

Declaration in
account, as
bailiff of goods
and chattels.
B. R.

London, *J. E.* complaineth of *W. W.* be-
to wit, *J.* ing in the custody of the mar-
shal of the *Marbalsea* of our lord the king,
before the king himself, in a plea that he
render to the said *J.* a reasonable account of
the time in which he was the bailiff of the
said *J.* at *London* aforesaid, for that whereas
he the said *W.* on the 14th day of *August* in
the year of our Lord 1734. and from thence
until the 1st day of *June* in the year of our
Lord 1740. at *London* aforesaid, in the parish
of *St. Mary le Bow* in the ward of *Cheap*,
was the bailiff of the said *J.* and for and
during that time had the care and manage-
ment of divers goods and chattels, to wit, of
three gold watches, and two silver watches of
the said *J.* there to merchandize and make
profit thereof for the said *J.* and to render
to the said *J.* a reasonable account thereof,
when

When he should be afterwards thereto requested; Yet the said *W.* altho' often requested, hath not yet rendered the aforesaid reasonable account of the said goods and chattels to the said *J.* but to render the same to him hath hitherto wholly refused, and still refuseth, to the said *J.* his damage of 100*l.* And therefore he bringeth his suit, &c. Pledges, &c.

And the said *W.* by *R. R.* his attorney *Plea Ne uir cometh* and defendeth the wrong and injury *ques ballivus.* when, &c. and saith, that he never was bailiff of the said *J.* nor had the care and management of the said goods and chattels; nor of any parcel of them, to render account thereof to the said *J.* when he should be thereto requested in manner and form as the said *J.* above complaineth against him: And of this he putteth himself upon the country.

London, to wit, *J. B.* and *J. A.* now wardens of the parochial church of the parish of *St. Bartholomew the less* near the *Royal Exchange*, London, complain of *J. E.* and *S. F.* late wardens of the same parochial church, being in the custody of the marshal of the *Marshalsea* of our sovereign lady the queen, before the queen herself, of a plea, that they render to the said *J.* and *J. A.* now wardens of the said parochial church, a reasonable account for the time in which they the said *J. E.* and *S. F.* were wardens of the parochial church of the said parish, and receivers of the monies, goods and chattels of the parishioners.

Declaration in account by the present church-wardens against the late church-wardens. B. R. 10 Mod. 22. 11 Mod. 186, 263.

ners of the said parochial church of the parish of *St. Bartholomew the less*, near the *Royal Exchange*, For that, to wit, that the said *J. E.* and *S. F.* being wardens of the said church at *London* aforesaid, in the parish aforesaid, in the ward of *Broadstreet*, from the feast of *Easter* in the year of our Lord 1706, until at and upon the feast of *Easter* in the year of our Lord 1708. within that time, by virtue of their said office, had the care and administration of the goods and chattels of the parishioners of the said parochial church, and received divers sums of money hereafter mentioned, to the use of the parishioners of the said church, paid to the said *J. E.* and *S. F.* by divers persons hereafter mentioned, to render account thereof; to wit, by the hands of *W. W.* 21 *l.* 6 *d.* 6 *d.* by the hands of *J. T.* 68 *s.* 6 *d.* by the hands of *M. E.* 6 *l.* 10 *s.* by the hands of *J. A.* 7 *l.* 16 *s.* 8 *d.* * by the hands of the parishioners of the said parish 1000 *l.* by the hands of *Mr. G.* 30 *l.* by the hands of *Mr. P.* 14 *s.* 2 *d.* [and so of many others, and then the declaration proceeds as follows] to render a reasonable account thereof to the said parishioners of the said parochial

* The defendants pleaded, that the plaintiffs were never elected church-wardens: Issue, and verdict for the plaintiffs. Judgment, that as to 1000 *l.* said to be received by the hands of the parishioners, the count should abate, and that the defendants *cant inde sine die*; and that as to the rest, the defendants should account, & *quid inde ulterius?*

Accompt.

31

parochial church, when they should be thereunto required; And afterwards, to wit, on the 5th day of *April* in the year of our Lord 1708. the said *J. E.* and *S. F.* from the office of wardens aforesaid, at *London* aforesaid, in the parish and ward aforesaid, were removed, and the said *J. B.* and *J. A.* the present plaintiffs, afterwards, to wit, on the 5th day of *April* in the year of our Lord last aforesaid, at *London* aforesaid in the parish and ward aforesaid, were in due manner elected and constituted into the office of wardens aforesaid by the parishioners of the said church, and now are wardens of the said church: *Nevertheless* the said *J. E.* and *S. F.* although often requested, have not yet rendered their account of the money and goods aforesaid to the said *J.* and *J. A.* now wardens of the said church, but have altogether refused, and still do refuse to render the same to them, to the damage of the parishioners of the said parochial church 2000 *l.* And whereupon they bring suit, &c.

Pledges, &c.

E 2

Bar

Plea to an action against the marshal for an escape, that E. G. in the declaration named escaped out of defendant's custody against his will, and returned into the said prison without his knowledge, and is therein detained.

AND the said R. in his proper person comes and defends the wrong and injury, when, &c. and says, that the said E. C. ought not to have or maintain his said action against him the said R. because he says, that after the said commitment of the said E. G. to the custody of the said R. in execution for the damages aforesaid, at the suit of the said E. C. in form aforesaid made, to wit, on the twenty-ninth day of *August* in the sixteenth year of the reign of our said lord the king, she the said E. being then in a certain prison called the *King's Bench* prison, situate in the parish of *St. George the Martyr* in the county of *Surrey*, in execution for the damages aforesaid, under the custody of the said R. as aforesaid, she the same E. upon the same day and year, at the parish aforesaid in the county aforesaid, by force and arms broke the said prison, and out of the said prison, and out of the custody of the said R. against the will of the said R. and without the knowledge of the said R. fled and escaped to places to the said R. unknown. And the said R. further saith, that before the day of exhibiting the said bill, and before the said R. had any notice of the said escape, that is to say, on the said twenty-ninth day of *August* in the said sixteenth year of the reign of our said lord the king, at the parish aforesaid in the said county, the said E. G. into the prison aforesaid, without the knowledge of the said R. M.

R. M. returned, and continually after such return hitherto the said *E. G.* in the said prison, under the custody of the said *R. M.* in execution for the damages aforesaid, at the suit of the said *E. C.* hath been detained, and is yet detained by the said *R. M.* which said escape of the said *E. G.* out of the said prison, and out of the custody of the said *R. M.* so as abovesaid made, is the same escape for which the said *E. C.* hath above declared against him the said *R. M.* and this the said *R. M.* is ready to verify: Wherefore he prays judgment, if the said *E. C.* ought to have or maintain his said action therefore against him the said *R. M.* &c.

R. Draper.

N. B. There must be an affidavit of the truth of this plea.

J. Strange.

And the said *J. G.* in his proper person comes and defends the force and injury, when, *Same plea by the warden of the Fleet.* &c. and says that the said *W. C.* ought not thereon to have or maintain his said action against him the said *J. G.* because he says, that after the said commitment of the said *E. L.* to the said prison of the *Fleet*, under the custody of the said *J.* in execution for the damages aforesaid, at the suit of the said *W. C.* in form aforesaid made, to wit, on the eighth day of *February* in the year of our Lord 1735. he the said *E. L.* being then in the prison of the *Fleet* aforesaid in execution

for the damages aforesaid under the custody of the said J. G. as aforesaid, he the said *E. L.* at *London* aforesaid, within the parish of *St. Bridget*, otherwise *St. Brides*, in the ward of *Farrington Without*, then and there broke the said prison by force and arms, and out of the said prison, and out of the custody of the said J. G. against the will of the said J. G. and without the knowledge of the said J. G. into the parish of *St Mary le Bow* in the ward of *Cheap, London*, aforesaid, and to places to the said J. G. unknown fled. And the said J. G. further says, that before the day of exhibiting the said bill, and before the said J. G. had any notice of the said escape, that is to say, the said eighth day of *February* aforesaid in the said year of our Lord 1735. at *London* aforesaid in the said parish of *St. Bridget*, otherwise *St. Brides*, in the ward of *Farrington Without* aforesaid, the said *E. L.* into the prison aforesaid, without the knowledge of the said J. G. returned, and continually after such return hitherto the said *E. L.* in the said prison under the custody of the said J. G. in execution for the damages aforesaid, at the suit of the said *W. C.* hath been detained, and is yet detained by the said J. G. which said escape of the said *E. L.* out of the said prison, and out of the custody of the said J. G. so as abovesaid made, is the same escape for which the said *W. C.* hath above declared against him the said J. G. and this the said J. G. is ready to verify: Wherefore he prays judgment, if the said *W. C.* ought

ought to have or maintain his said action
therefore against him the said J. G. &c.

W. Hawkins.

And the said S. by T. O. her attorney *Plea by executrix of a bond given by her testator, and judgment thereon obtained, with plene administravit, in bar of the action brought by Q.*
comes and defends the wrong and injury, when, &c. and saith, that the said W. P. ought not to have or maintain his said action against her, because she saith, that the said M. B. in his life-time, to wit, on the sixth day of *January* in the year of our Lord 1729. at *Westminster* afore said, by a certain writing obligatory sealed with his seal, and then and there delivered as his deed for a true and just debt, acknowledged himself to be held and firmly bound to one W. B. esq; in 276 l. of lawful money of *Great Britain*, to be paid to the said W. B. when he should be thereunto afterwards required; which said writing obligatory at the time of the death of the said M. was in its full force and virtue, not satisfied, discharged or cancelled; whereupon the said W. B. for recovering his said debt after the death of the said M. to wit, in this present term of St. *Michael* in the fourteenth year of the reign of our said lord the king, in the court of our said lord the king before Sir J. W. knt. and his companions, then justices of our said lord the king of the bench at *Westminster* afore said, impleaded the said S. upon the writing obligatory afore said, as executrix of the last will and testament of the said M. of a plea of debt for the said 276 l.

in which said plea such proceedings were had in the said court of our said lord the king of the bench, that afterwards, to wit, in this same *Michaelmas* term, the said *W. B.* in the same court, by the consideration of the same court, recovered against the said *S.* as well the said debt of 276 *l.* as 50 *s.* which were adjudged to the said *W.* in the same court for his damages which he had sustained by reason of the detaining the said debt, to be levied of the goods and chattels which were of the said *M.* at the time of his death in the hands of the said *S.* to be administered, if she had so much thereof in her hands to be administered; and if she had not so much thereof in her hands to be administered, then the damages aforesaid to be levied of the proper goods and chattels of the said *S.* whereof she is convicted, as by the record of the said judgment now remaining in the said court of our said lord the king of the bench at *Westminster* aforesaid more fully appears; which said judgment so as aforesaid had and obtained upon the said writing obligatory, was so had and obtained for a true and just debt due and owing to the said *W. B.* by the said *M.* at the time of his death upon the writing obligatory aforesaid, and the said judgment yet remains in its full force and effect, not reversed, annulled, discharged or satisfied. And the said *S.* further saith, that she hath fully administered all and singular the goods and chattels which were of the said *M.* at the time of his death in her hands to be administered, except goods and chattels to the value of 5 *l.* and that she
has

has not, nor on the day of exhibiting the said bill of the said *W. P.* or ever after, had any goods or chattels which were of the said *M.* at the time of his death in her hands to be administered, except goods and chattels to the value of the said 5 *l.* which are liable towards the satisfaction of the money due upon the said judgment here above mentioned; and this the said *S.* is ready to verify: Wherefore she prays judgment, if the said *W. P.* ought to have or maintain his said action against her, &c.

Tho. Denison.

And the said *A.* by *T. H.* his attorney, comes and defends the force and injury, when, *Plea, a general release.*
&c. and says, that the said *B.* ought not to have or maintain his said action against him, because he says, that after the making of the said several promises and undertakings in the said declaration mentioned above supposed to be made, and before the day of exhibiting of the said bill of the said *B.* against him, to wit, on the tenth day of *May* in the thirteenth year of the reign of the lord the now king, at the parish aforesaid in the said county, the said *B.* by his certain writing of release indented, sealed with the seal of the said *B.* and now shewn here to the court of the said lord the king, bearing date the same day and year, did remise, release and for ever quit-claim unto the said *A.* his heirs, executors and administrators, all and all manner of action and actions, cause and causes of action, suits, bills, bonds, obligations, debts, dues, duties,

duties, reckonings, accounts, sum and sums of money, judgments, executions, extents, quartels, controversies, trespasses, damages and demands whatsoever, which against him the said *A.* he the said *B.* his heirs, executors or administrators, should or might have, claim, challenge or demand for or by reason or means of any matter, cause or thing whatsoever, from the beginning of the world to the day of the date of the said writing of release, as by the said writing of release amongst other things more fully appears; and this he is ready to verify: Wherefore he prays judgment, if the said *B.* ought to have or maintain his said action against him, &c.

W. Hayward,

*Replication,
non est fac-
tum.*

And the said *B.* saith, that he ought not, by any thing by the said *A.* above in pleading alledged, to be barred from having or maintaining his said action in this behalf against him, because he saith, that he the said *B.* did not, after the making the several promises and assumptions in the said declaration mentioned, make such indenture of release as the said *A.* hath above in pleading alledged; and this he prays may be inquired of by the country; and the said *A.* doth so likewise.

*Plea, a gene-
ral release.*

And the said *W.* by *N.T.* his attorney, comes and defends the force and injury, when, &c. and says, that the said *A.* ought not to have or maintain her said action thereof against him, because he says, that after the making the

the said several promises and undertakings in the said declaration mentioned above supposed to be made, and before the exhibiting of the said bill of the said *A.* to wit, on the fifteenth day of *April* in the fifteenth year of the reign of our lord the now king at *Ludlow* aforesaid in the said county, the said *A.* by her certain writing of release sealed with the seal of the said *A.* and then and there made and duly executed by her, which said writing of release the said *W.* brings here into court, the date whereof is the day and year last mentioned, for herself, her heirs, executors and administrators, did remise, release and for ever quit-claim unto the said *W.* his heirs, executors and administrators, all and all manner of action and actions, cause and causes of actions, suits, bills, bonds, writings obligatory, debts, dues, duties, reckonings, accounts, sum and sums of money, judgments, executions, extents, quarrels, controversies, trespasses, damages and demands whatsoever both at law and in equity, or otherwise howsoever, which against him the said *W.* she ever had, then had, or which she the said *A.* her heirs, executors or administrators could, should or might have, claim, challenge or demand, for or by reason or means of any act, matter cause or thing, from the beginning of the world to the day of the date of the said writing of release, as by the said writing of release amongst other things more fully appears; and this he is ready to verify: Wherefore he prays judgment if the said *A.* ought

to have or maintain her said action thereof against him, &c.

D. Pools.

*Replication,
durefs of im-
prisonment.*

And the said *A.* says, that she by any thing above alledged by the said *W.* in pleading ought not to be barred from having her action aforesaid against him the said *W.* because she saith, that she the said *A.* at the time of making the writing aforesaid, was imprisoned by him the said *W.* to wit, at *Ludlow* aforesaid in the said county, and was there detained in prison until she the said *A.* by force and durefs of that imprisonment, then and there, made the said writing to the said *W.* and this she is ready to verify: Wherefore she prays judgment and her damages by reason of the premises to be adjudged to her, &c.

Fran. Roche

Rejoinder.

And the said *W.* protesting that the said *A.* at the time of making of the writing aforesaid, was not imprisoned as the said *A.* has in and by her said replication above supposed, for rejoinder the said *W.* says, that the said writing was not made by force and durefs of imprisonment, as the said *A.* has in her said replication above alledged; and hereupon he puts himself upon the country, &c. Verdict for plaintiff.

*Demurrer to a
declaration,*

And the said *R.* in his own proper person comes and defends the wrong and injury, when,

when, &c. and saith, that the said declaration in manner and form aforesaid above made, and the matter therein contained are not sufficient in law for the said *E.* to have and maintain his said action against the said *R.* to which said declaration the said *R.* hath no need nor is he obliged by the law of the land to answer; and this he is ready to verify: Wherefore for want of a sufficient declaration in this behalf, the said *R.* prays judgment if the said *E.* ought to have or maintain his said action against him; and for causes of demurrer in law in this behalf the said *R.* according to the form of the statute in such cases lately made and provided, shews to the court here these causes following, that is to say, for this that it is not alledged in the said declaration, that there is any record of commitment of the said *W. A.* to the custody of the said *R.* as marshal of the *Marshalsea* of the said lord the king before the king himself, nor is it alledged in the said declaration, that any such commitment of the said *W. A.* appears or remains of record in the said court of the lord the king before the king himself, and also for that the said declaration is uncertain and wants form, &c.

Causes.

R. Draper.

And the said *E.* prayeth leave to imparle *Imparlane:* to the said plea until *Saturday* next after three weeks from the day of *St. Michael*, and then to answer the same, &c. and it is granted, &c. and thereupon the same day is given to the

Joinder.

the parties aforesaid, to come before our lord the king at *Westminster*, at which day as well the said *E.* doth come by his said attorney, as the said *R.* in his proper person. And the said *E.* saith that notwithstanding any thing by the said *R.* above alledged, he ought not to be barred from having his said action maintained against the said *R.* because he says that the said declaration, and the matter therein contained, are good and sufficient in law for him the said *E.* to maintain his said action against the said *R.* which said matter contained in the said declaration, he the said *E.* is ready to verify and prove in such manner as the court shall think fit; and because the said *R.* hath made no answer to the said declaration, nor in any wise denied the same, the said *E.* prays judgment, and that his damages occasioned by the premisses may be awarded to him. But because the said court of our said sovereign lord the king is not yet advised about giving judgment of and concerning the premisses, day is therefore given to the said parties to be before our lord the king at *Westminster* until *Friday* next after eight days of the purification of the blessed Virgin *Mary*, to hear judgment of and upon the same premisses, for that the court of our said lord the king now here is not yet advised thereof, &c.

Continuance.

John Stracy.

And

And the said *J.* by *A. B.* his attorney, *Plea in trespass, a justification as having a right to and using a way through the locus in quo, &c.* comes and defends the force and injury, when, and so forth, and as to the coming with force and arms, and whatever is against the peace of the said lord the king, says, that he is not thereof guilty; and hereupon he puts himself upon the country, and the said *W.* does so likewise; and as to the residue of the said trespass above supposed to be done, the said *J.* says, that the said *W.* ought not therefore to have or maintain his said action against him, because he says, that *C. C.* esq; long before the said first time, when, &c. was seised in his demesne as of fee of and in a certain mesuage, and a certain meadow called

with the appurtenances, situate, lying and being in the parish aforesaid; and the said *C.* and all those whose estate he had and has in his said mesuage and meadow called

with the appurtenances, from time whereof the memory of man is not to the contrary, have had and used, and have been used and accustomed, and of right ought to have and use a certain way as well on foot as on horseback, as for their carts and carriages, and for the driving of their cattle from the said mesuage, with the appurtenances, into, through and over the said close called *D.* field, in which, &c. into the said meadow called

and back again from the said meadow called into, through and over the said close called *D.* field, in which, &c. in the said way there to the said mesuage, with the

appur-

appurtenances, every year, at all times of the year, when and as often as occasion required, for the use and enjoyment of the said meadow called and the perception of the profits thereof; and the said C. being so seised of the said mesuage and meadow called with the appurtenances as aforesaid, he the said C. long before the said first time, when, &c. to wit, on the twenty-sixth day of *March* in the year of our Lord 1738. at the parish aforesaid, demised the said mesuage and meadow called with the appurtenances, to the said J. J. to have and to hold to the said J. from the feast of the annunciation of the blessed Virgin *Mary* then last past, for and during one whole year, and from the end of that year from year to year, at the will of the said C. and J. J. by virtue of which said demise he the said J. J. entered into the said demised mesuage, and meadow called with the appurtenances, and from thenceforth hitherto has been and still is possessed thereof, and being so possessed thereof, he the said J. J. on the said tenth day of *December* in the said thirteenth year of the reign of our said lord the king, and at divers other days and times between that day and the said 15th day of *January* in the said fourteenth year of the reign of our said lord the king, went on foot with his said cattle in the said declaration mentioned, and with his said carts and carriages therein also mentioned, drawn by the said horses, mares, geldings and oxen
from

from his said mesuage; with the appurtenances, into, through and over the said close called D. field, in which, &c. in the said way there into his said meadow called and back again from his said meadow called into; through and over the said close; in which, &c. in the said way there to his said mesuage, with the appurtenances, for the use and enjoyment of the said meadow called and for the perception of the profits thereof; as it was lawful for him to do; and in so doing he the said J. J. necessarily trod down and consumed with his feet in walking, a little of the said grass and corn then growing in the said way in the said close; in which, &c. and broke up, subverted, spoiled and consumed with the wheels of the said carts and carriages, the soil of the said close; in which, &c. in the said way there; and the said other grass and corn growing in the said way there; and the said cattle in their passage through the said close; in which, &c. on the occasion aforesaid, did necessarily tread down with their feet a little of the said grass and corn then growing in the said way in the said close; in which, &c. and against the will of the said J. J. snatched and eat up and consumed a little more of the said grass and corn growing in the said way there and on the sides thereof; and the said J. J. in the said use and enjoyment of his said way in and through the said close; in which, &c. did as little damage to the said W. as he could, which said breaking and entering of the said

close, in which, &c. and the treading down and consuming with his feet in walking the said grass and corn there growing, and the eating up, treading down and consuming with the said cattle the said other grass and corn there growing, and the breaking up, subverting, spoiling and consuming with the said wheels of carts and carriages the said soil of the said close, in which, &c. and the said other grass and corn there likewise growing in manner aforesaid, and for the cause aforesaid done, are the residue of the said trespass, of which the said *W.* hath above complained against him; and this he is ready to verify: Wherefore he prays judgment, if the said *W.* ought therefore to have or maintain his said action against him, &c.

Replication.

And the said *W.* as to the plea of the said *J. J.* as to the residue of the said trespass by him done as aforesaid, by him above pleaded in bar, says, that by reason of any thing above pleaded by the said *J. J.* in that respect he ought not to be barred from having his said action therefore against him, because he says, that the said *J. J.* on the said tenth day of *December* in the said thirteenth year of the reign of the said lord the king, and on divers other days and times between that day and the said fifteenth day of *January* in the said fourteenth year of the reign of the said lord the king, broke and entered the said close of the said *W.* in which, &c. and trod down and consumed with his feet in walking the said grass and corn there growing,

ing, and eat up, trod down and consumed with the said cattle the said other grasse and corn there growing, and broke up, subverted, spoiled and consumed with the wheels of carts and carriages the said soil of the said close, and the said other grasse and corn there growing, as the said *W.* hath thereof above complained against him in his own wrong; without this, that the said *C.* and all those whose estate he had and has in his said mesuage and meadow, called *B.* with the appurtenances, from the time whereof the memory of man is not to the contrary, have had and used, and have been used and accustomed, and of right ought to have and use a certain way as well on foot as on horseback, as for their carts and carriages, and for the driving of their cattle from the said mesuage, with the appurtenances, into, through and over the said close called *D.* field, in which, &c. into the said meadow called *E.*

and back again from the said meadow called *E.* into, through and over the said close called *D.* field, in which, &c. into the said way there to the said mesuage, with the appurtenances, every year, at all times of the year, when and as often as occasion required, for the use and enjoyment of the said meadow called *E.*

and the perception of the profits thereof, in manner and form as the said *J. J.* hath by the said plea in that respect above alledged; and this he is ready to verify: Wherefore seeing the said *J. J.* hath above

acknowledged the residue of the said trespass by him done as aforesaid, the said *W.* prays judgment and his damages by reason thereof to be adjudged to him, &c.

Rejoinder.

And the said *J. J.* says, as before, that the said *C.* and all those whose estate he had and has in his said mesuage and meadow called with the appurtenances, from the time whereof the memory of man is not to the contrary, have had and used, and have been used and accustomed, and of right ought to have and use a certain way as well on foot as on horseback, as for their carts and carriages, and for the driving of the cattle from the said mesuage, with the appurtenances, into, through and over the said close called *D.* field, in which, &c. into the said meadow called and back again from the said meadow called into, through and over the said close called *D.* field in which, &c. in the said way there to the said mesuage, with the appurtenances, every year, at all times of the year, when and as often as occasion required, for the use and enjoyment of the said meadow called and the perception of the profits thereof, in manner and form as the said *J. J.* hath by his said plea in that respect above alledged; and hereupon he puts himself upon the country; and the said *W.* does so likewise: Therefore as well to try this issue, as the said other issue between the parties above joined, let, &c.

And the said *E.* by *A. B.* her attorney, *Plea to an ac-*
comes and defends the wrong and injury, *tion of cove-*
when, &c. and saith, that the said *M.* ought *nant brought*
not to have or maintain her said action against *by the execu-*
her, because she says, that the said *W.* in his *trix of the les-*
life-time, to wit, on the sixteenth day of *for against the*
October in the year of our Lord 1725. at *executrix of*
Westminster aforesaid, by his deed, which the *the lessee, that*
said *E.* sealed with the seal of the said *W.* *the lessee had*
brings here into court, bearing date the same *assigned the*
day and year, assigned the said demised pre- *premises, and*
misses, with the appurtenances, and all his *the lessor had*
said estate, right, title, interest and term of *notice of it,*
years therein then to come and unexpired, to *and accepted*
the said *H. H.* by virtue of which assignment *rent of the*
he the said *H.* entered into the said demised *assignee.*
premises, with the appurtenances, and from
thenceforth hitherto has been and still is pos-
sessed thereof; and the said *E.* further says,
that the said *J.* afterwards, to wit, on the
twenty-fifth day of *December* in the year last
aforesaid, at *Westminster* aforesaid, had notice
of the said assignment, and then and there
consented and agreed to the same, and after-
wards, to wit, on the feast of the annuncia-
tion of the blessed Virgin *Mary* in the year
of our Lord 1726. at *Westminster* aforesaid,
received and accepted of the said *H.* 15*l.* of
the rent aforesaid for half a year of the said
term, which became due from the said *H.* to
the said *J.* after the said assignment so made
to the said *H.* as aforesaid; and this she is
ready to verify: Wherefore she prays judg-
ment,

ment, if the said *M.* ought to have or maintain her said action against her, &c.

P. Ward.

Demurrer.

And the said *M.* says, that she by any thing by the said *E.* above alledged in pleading ought not to be barred from having her said action against the said *E.* because the said *M.* says, that the said plea, and the matter therein contained, are not sufficient in law to bar the said *M.* from having her said action against the said *E.* to which said plea in manner and form aforesaid above pleaded, and the matter therein contained, the said *M.* hath no need, nor is she bound by the law of the land in any manner to answer; and this she is ready to verify: Wherefore, for want of a sufficient answer in this behalf, she the said *M.* prays judgment, and that her damages by reason of the breaking of the covenant aforesaid may be adjudged to her, &c.

R. Draper.

Joinder.

And the said *E.* saith, that the said plea aforesaid, in manner and form by her the said *E.* above pleaded, and the matter in the same contained, are good and sufficient in law to bar the said *M.* from having her action aforesaid against her the said *E.* which said plea, and the matter therein contained, the said *E.* is ready to verify and prove, as to the court shall seem meet; and because the said *M.* hath

hath not answered the said plea, nor hitherto hath any way gainsaid the same, the said *E.* as before prays judgment, and that the said *M.* may be barred from having her said action against her. But because the court of our said lord the king now here is not yet advised about giving judgment of and upon the premisses, day is therefore given to the said parties to be before our lord the king at *Westminster*, until next after to hear judgment of and upon the premisses, for that the court of our said lord the king now here is not yet advised thereof.

Judgment for the plaintiff. 1 *Saund.* 240. *Cro. Car.* 188. *Cro. Jac.* 521, 557. 2 *Saund.* 380.

And the said *E.* by *J. C.* her attorney, comes and defends the force and injury, when, *Plea by an executrix, a bond entered into by her* *E. c.* and says, that the aforesaid *W. W. W.* ought not to have his action aforesaid against her, because she says, that the aforesaid *E.* in judgment there- *testator, and on against her.* his life-time, to wit, on the twenty-first day of *August* in the year of our Lord 1729. at *Westminster* in the county aforesaid, by his certain writing obligatory granted himself to be bound unto one *H. B.* esq; in 1000 *l.* to be paid to the same *H. B.* when he should be thereunto required, which said writing obligatory was made by the said *E.* in his life-time to the aforesaid *H.* for a true and just debt of the said *E.* and afterwards the said *E.* at *Westminster* aforesaid died, the said debt or any part thereof not being paid or satisfied at the

time of the death of the said *E.* for which the said *H.* after the death of the said *E.* the said 1000 *l.* being still unpaid, to wit, in *Trinity* term in the sixth and seventh years of the reign of the said lord the now king in his said majesty's court of Common Bench here, to wit, at *Westminster*, before Sir *R. E.* knt. and his companions, the then justices of our said lord the now king of the said court of Common Bench, impleaded her the said *E.* by the name of *E. W.* late of the parish of *St. Martin in the Fields* in the county of *Middlesex*, widow and executrix of the last will of *E. W.* lately called *E. W.* of the parish of *St. Martin in the Fields* in the county of *Middlesex*, perwig-maker, in a plea of debt for the aforesaid 1000 *l.* on the writing aforesaid, in which plea such proceedings were had, that afterwards, to wit, in the same *Trinity* term, he the said *H.* by the consideration of the same court, recovered against the aforesaid *E.* as well his said debt of 1000 *l.* as 7 *l.* 10 *s.* which were adjudged to him the said *H.* in the same court for his damages which he had by the occasion of detaining that debt, to be levied of the goods and chattels which were the aforesaid *E.*'s at the time of his death in the hands of her the aforesaid *E.* to be administered, if she the said *E.* had so many goods and chattels which were the said *E.*'s at the time of his death in her hands to be administered, and if she had not, then the damages aforesaid to be levied of the proper goods and chattels of her the said *E.* where-
of

of she is convicted, as by the record and proceedings thereof remaining in the same court may more fully appear; which said judgment still remains in its full force and virtue, not reversed, annulled, or any ways satisfied. And the aforesaid *E.* further says, that she hath fully administered all the goods and chattels which were the said *E.*'s at the time of his death in her hands to be administered, except goods and chattels to the value of 5*l.* and that she hath not, nor on the day of obtaining the original writ of him the said *W. W.* aforesaid, or at any time since had any goods or chattels which were the aforesaid *E.*'s at the time of his death in the hands of her the said *E.* to be administer'd, except the said goods and chattels, to the value of the said 5*l.* which are not sufficient to pay the said 1000*l.* and which are charged and bound towards the payment of the same; and this she is ready to verify: Whereupon she prays judgment, if the aforesaid *W. W.* ought to have his action aforesaid against her, with this, that the aforesaid *E.* doth aver, that the aforesaid *E.* in the said writing obligatory, and in the record of the judgment aforesaid pleaded named, are one and the same person, and not another or divers, and that the aforesaid *E.* the now defendant, and the said *E.* in the same record of the judgment aforesaid named, are one and the same person, and not another or divers, &c.

W. Chapple.

And

Replication
that the bond
was not for a
just debt, but
upon condition,
&c.

2 Saund. 50.

3 Cro. 462.

Contra, Lut.

111.

4 Co. 109.

Ashton and

Sherman.

Carth. 429.

Salk. 298.

Comb. 444.

Cases B. R.

153.

Holt. 308.

Lill. Ent.

158.

And the said *W. W. W.* saith, that he by any thing before alledged ought not to be precluded from having his action aforesaid against the aforesaid *E.* because he says, that true it is that the said *E.* in his life-time became bound to the said *H. B.* in the said writing obligatory in the said plea before mentioned, and that after the death of the said *E.* the said judgment was had and obtained by the said *H.* against the said *E.* as the said *E.* hath before alledged; but the said *W. W. W.* further saith, that the said writing obligatory was not made by the said *E.* in his life-time to the said *H. B.* for a true and just debt of the said *E.* as the said *E.* in and by her plea aforesaid hath alledged; but that the same was made by the said *E.* in his life-time, under a condition thereunto written, that if the said *E.* did and should permit and suffer the said *E.* notwithstanding coverture, in case she should happen to die without issue of the said *E.* by any deed or writing, deeds or writings, or by her last will and testament in writing executed in the presence of two or more credible witnesses, to give and dispose of the sum of 500 *l.* to any person or persons as she should think fit; and also if the said *E.* his heirs, executors and administrators, did and should well and truly pay, or cause to be paid, the sum of 500 *l.* to such person or persons as the said *E.* should think fit to appoint, give or dispose the same at the day of the death or decease of the said *E.*

then

then the said obligation should be void and of none effect. And the said *W. W. W.* further saith, that the said *E.* on the day of obtaining the original writ of him the said *W. W. W.* that is to say, the second day of *October* in the year of our Lord 1733. had divers goods and chattels which were the aforesaid *E.*'s at the time of his death in the hands of her the said *E.* to be administered, sufficient to satisfy the said *W. W. W.* his said debt, and more, that is to say, at *Westminster* aforesaid in the county aforesaid; and this he is ready to verify: Whereupon he prayeth judgment and his said debt, together with his damages by occasion of the detaining of the same debt, to be adjudged, &c.

R. Wynne.

And the said *E.* saith, that the said plea of *Demurrer* the said *W. W. W.* above by replying pleaded, and the matter in the same contained, are not sufficient in law to maintain the said *W. W. W.* to have his said action against her, and that she is not constrained, neither is in any ways bound by the law of the land, to answer to the said plea; and this she is ready to verify: Therefore, for want of a sufficient plea in this behalf, she prays judgment, and that the said *W. W. W.* may be precluded from having his said action against her, &c. and for causes of demurrer in law in this behalf, she the said *E.* according to the form of the statute in such case lately

lately made and provided, doth shew and demonstrate here to the court these causes following, to wit, For that the said plea is double, relying on several distinct matters that are respectively issuable, more particularly in alledging that the said *E.* hath suffered the said judgment to remain in force, with an intention to defraud the said *W. W. W.* of his said debt, that is to say, at *Westminster* in the said county of *Middlesex*, and also that the said *E.* on the day of obtaining the original writ of him the said *W. W. W.* that is to say, on the second day of *October* 1733. had divers goods and chattels which were the aforesaid *E.*'s at the time of his death in the hands of her the said *E.* to be administered, sufficient to satisfy the said *W. W. W.* his said debt, and more, that is to say, at *Westminster* aforesaid, in the county aforesaid, and for that the said *W. W. W.* doth not alledge or shew that the said *E.* had or hath more assets in her hands than will satisfy the above-mentioned judgment or the money due thereon, and for that the matter last offered in issue, is altogether immaterial, uncertain, &c.

W. Chapple.

Joinder.

And the said *W. W. W.* saith, that since he hath in his replication aforesaid alledged matter in law sufficient to enable him the said *W. W. W.* to have his action aforesaid against the said *E.* which he is ready to verify; which said matter the said *E.* doth not deny,

deny, nor give any manner of answer thereunto, but doth altogether refuse to admit that averment, he the said *W. W. W.* as before, prays judgment, together with his damages, by reason of his detaining of his said debt, to be adjudged to him, &c. And because the justices here will advise themselves of and concerning the premisses before they give judgment thereupon, a day is given to the parties aforesaid here, until to hear their judgment thereupon, for that the same justices here are not, &c. at which day cometh here as well the said *W. W. W.* as the said *E.* by their attornies aforesaid, and thereupon the premisses being seen and fully understood by the justices here, and mature deliberation being thereupon had, for that it seems to the same justices here, that the aforesaid plea of the said *W. W. W.* above by replying pleaded, and the matter in the same contained, are sufficient in law to maintain the said *W. W. W.* to have his said action against the same *E.* as the same *W. W. W.* above hath alledged: *Therefore* it is considered, that the said *W. W. W.* do recover against the said *E.* his said debt and his damages by reason of the detaining of that debt to 11 l. adjudged by the court here to the said *W. W. W.* with his consent, to be levied of the goods and chattels which were of the aforesaid *E.* at the time of his death in the hands of the said *E.* to be administered, if she hath so much thereof in her hands to be administered; and if she hath not so much thereof

Continuance.

Judgment for
plaintiff on
demurrer.

in

in her hands to be administered, then the damages aforesaid to be levied of the proper goods and chattels of the said *E.* And the said *E.* in mercy, &c.

Plea, for assault demerit.

And the said *T. K.* by *M. P.* his attorney, comes and defends the force and injury, when, &c. and as to the coming with force and arms, and whatever else is against the peace of our said lord the now king, he the said *T.* saith he is not guilty thereof; and of this he puts himself upon the country; and the aforesaid *A. R.* likewise: And as to the residue of the said trespass above supposed to be done, the said *T.* saith, that the said *A. R.* ought not to have or maintain her action therefore against him, because he saith, that the said *A.* at the time when the said trespass is above supposed to be done, at the said parish of *St. Anne* within the liberty of *Westminster* in the county of *Middlesex* aforesaid, with force and arms, &c. made an assault upon him the said *T.* and would then and there have beat, wounded and evilly treated him the said *T.* if he the said *T.* had not then and there forthwith defended himself against the said *A.* and so the said *T.* saith, that if any mischief or damage then and there happened to the said *A.* it was occasioned by the said assault made by her the said *A.* and in the defence of him the said *T.* and this the said *T.* is ready to verify: Wherefore he prays judgment, if the aforesaid *A.* ought to have or maintain her action aforesaid against him, &c.

And

And the said *T. D.* by ——— his attorney, comes and defends the force and injury, when, *Plea, as to the first, part of the second, and as to the third promise, non assumpsit.* *Ec.* and says, that the said *M.* ought not to have or maintain her said action against him, because as to the said first promise, and as to 6*l.* 15*s.* 6*d.* parcel of the said 10*l.* in the said second promise mentioned, and also as to the said third promise he says, that he did not undertake in manner and form as the said *M.* above complains thereof against him; and of this, *Ec.* and as to 3*l.* 4*s.* 6*d.* residue of the said 10*l.* in the said second promise mentioned, the said *T. D.* says, that he, after the death of the said *T. C.* and after the committing the said letters of administration to the said *M.* and before the day of exhibiting the bill of the said *M.* to wit, on the day of ——— in the year of our Lord at ——— aforesaid, offered to pay to the said *M.* the said 3*l.* 4*s.* 6*d.* which said 3*l.* 4*s.* 6*d.* the said *M.* then and there refused to receive. And the said *T. D.* further says, that he always afterwards hitherto was, and still is ready to pay to the said *M.* the said 3*l.* 4*l.* 6*d.* and brings the same here into court ready to be paid to the said *M.* if the said *M.* will receive the same: and this, *Ec.* Wherefore, *Ec.* *As to the residue a tender.*

And the said *W.* by *G. I.* his attorney, comes and defends the force and injury, when, *Plea, payment to a bill obligatory according to the statute.* *Ec.* and says, that the said *J.* ought not to have his said action thereupon against him, because,

because according to the form of the statute in such case lately made and provided, the said *W.* says, that he the said *W. B.* in the said bill obligatory named, before the suing out the said original writ of the said *J. B.* at *Hush Cham Flower* aforesaid, paid to the said *J.* the said ten pounds and eighteen shillings in the said bill obligatory above mentioned, and all interest therefore due unto such payment thereof; and this he is ready to verify! Wherefore he prays judgment if the said *J. B.* ought to have his said action thereupon against him, &c.

Plea, solvit ad diem to a bond. And the said *A.* by ——— his attorney, comes and defends the force and injury, when; &c. and prays oyer of the said writing obligatory; and it is read to him, &c. And he also prays oyer of the condition of the said writing obligatory; and it is read to him in these words, to wit, Which being read and heard, the said *A.* says, that the said *A.* ought not to have or maintain her said action thereupon against him, because he says, that he the said *A.* paid to the said *A.* upon the thirteenth day of *September* in the said condition above specified the said two hundred and six pounds, which he and the said *H.* and *A.* or any of them, ought to have paid to the said *A.* upon that day, according to the form and effect of the said condition, to wit, in the then dwelling-house of the said *A. M.* situate in the parish of *St. Margaret Lothbury, London,* in the ward of *Caleman-*
street

street there; and this he is ready to verify: Wherefore he prays judgment if the said *A.* ought to have or maintain her said action thereupon against him, &c.

And the said *A.* says, that she by any thing by the said *A.* above by pleading alledged ought not to be barred from having her said action thereupon against him the said *A.* because she says, that the said *A.* did not pay to her the said *A.* upon the said thirteenth day of *September* in the said condition above specified the said two hundred and six pounds which he and the said *H.* and *A.* or any of them, ought to have paid to the said *A.* upon that day, according to the form and effect of the said condition, in manner and form as the said *A.* has above by pleading alledged: And this she prays may be inquired of by the country: And the said *A.* does so likewise. *Issue.*

And the said *J.* saith, that he by any thing before alledged by the said *W.* in pleading ought not to be barred from having his afore-said action against the said *W.* because he says, that he the said *J.* after the making the said several promises and undertakings, to wit, in *Hilary* term in the thirteenth year of the reign of his late majesty *George* the first, late king of *Great Britain*, &c. for the reco-

Replication to a plea of non ass. infra sex annos, that the plaintiff sued out a bill of Middlesex, with continuance, by vic non misit breve, to the time of appearance.

VOL. II.

G

very

Carthew 144.

Elstob executor of *Jane Elstob v. Thorowgood.* 1 R. Raym. 283. 1 Salk. 393. 1 R. Raym. 432, 433. 2 Vent. 254. *Stile* 401. 1 Sid. 228. *Lilly's Ent.* 105. *A latitat sued out, &c.*

Lilly's Ent.
32.

very of his damages occasioned by the not performing the several promises and undertakings aforesaid; sued out of his said late majesty's court before the said late king, the said court being then at *Westminster* in the said county of *Middlesex*, a certain precept of the said late king, called a bill of *Middlesex*, against the said *W.* directed to the then sheriff of *Middlesex*, by which said precept the said late king commanded the said then sheriff, that he should take the said *W.* if, &c. and him safely, &c. so that the said then sheriff might have his body before our lord the said late king at *Westminster* aforesaid, on *Monday* next after the octave of the purification of the Blessed Virgin *Mary* then next ensuing, to answer to the said *J.* on a plea of trespass, and also to a bill of the said *J.* against the said *W.* for two hundred pounds, on undertakings, according to the custom of the court of the said late king before the said king to be exhibited, and that the said sheriff should then have there that precept, which said precept was so prosecuted by the said *J.* against the said *W.* with intent that the said *W.* might by virtue thereof be taken and arrested by his body to appear before his said late majesty at *Westminster* at the return of the said precept, and that on such appearance the said *J.* might exhibit his bill against the said *W.* in his said late majesty's court before the said late king, in a plea of trespass on the case for not performing the said several promises and undertakings mentioned in the abovesaid declaration of the said

J.

J. in order to recover his damages occasioned by the not performing thereof, and might thereupon recover those damages against the said W. At which day, to wit, *Monday* next after the octave of the purification of the Blessed Virgin Mary, before the said late king at *Westminster* aforesaid the said J. came in his own person, and offered himself against the said W. on the aforesaid plea and bill: And the said sheriff, to wit, Sir J. L. knt. and W. O. esq; then sheriff of the county of *Middlesex*, returned that the said W. was not found in his bailiwick, and the said W. did not come: Therefore, as before, the sheriff was commanded, that he should take the said W. if, &c. and him safely, &c. so that he might have his body before the said late king at *Westminster* aforesaid on *Wednesday* next after fifteen days from the day of *Easter* then next ensuing, to answer to the said J. on his plea and bill aforesaid. The same day was given to the said J. at the same place: At which day, before the said late king at *Westminster* aforesaid, the said J. came in his own person, and offered himself against the said W. on the plea and bill aforesaid; and the sheriff did not return the said precept, nor did he do any thing thereupon; and the said W. did not come: Therefore, as before, the sheriff was commanded, that he should take the said W. if, &c. and him safely, &c. so that he might have his body before the said late king at *Westminster* aforesaid, on *Friday* next after the morrow of the Holy Trinity then next ensuing,

Demise le roy.

ing, to answer to the said *J.* on the plea and bill aforesaid : The same day was given to the said *J.* at the same place : At which day before the said late king at *Westminster* aforesaid the said *J.* came in his own person, and offered himself against the said *W.* on the plea and bill aforesaid ; and the said sheriff did not return the said precept, nor did he do any thing thereupon ; and the said *W.* did not come : Therefore, as before, the sheriff was commanded that he should take the said *W.* if, &c. and him safely, &c. so that he might have his body before the said late king at *Westminster* aforesaid ; * on *Monday* next after three weeks from the day of *St. Michael* then next ensuing, to answer to the said *J.* on the plea and bill aforesaid : The same day was given to the said *J.* at the same place : Before which day, to wit, on the eleventh day of *June* in the year of our Lord one thousand seven hundred and twenty-seven, the said king *George* the first departed this life, to wit, at *Westminster* aforesaid : At which day, to wit, the said *Monday* next after three weeks from the day of *St. Michael*, before our lord *George* the second, now king of *Great Britain*, &c. at *Westminster* aforesaid, the said *J.* came in his own person, and offered him against the said *W.* on the plea and bill aforesaid ; and the sheriff did not return he said precept, nor did he do any thing thereupon ; and the said *W.* did

* No such return now. See *Vol. 1 p. —.*

did not come. [*Et sic de ceteris*, to the process the defendant appeared on; the award of which follows.] Therefore, as before, the said sheriff was commanded that he should take the said *W.* if, &c. and him safely, &c. so that he might have his body before our said lord the king at *Westminster* aforesaid on *Wednesday* next after three weeks from the day of *St. Michael* next ensuing, to answer to the said *J.* on the plea and bill aforesaid: The same day was given to the said *J.* at the same place: At which day before our said lord the king at *Westminster* aforesaid came as well the Defendant ap-
 said *J.* by his attorney, as the pears.
 said *W.* by his attorney, and ap-
 appeared in the said court here, according to the custom of the said court, to answer the said *J.* on the plea and bill aforesaid; and there-
 upon the said *J.* upon the said appearance of the said *W.* then and there in the said court here exhibited his said bill against the said *W.* declaring against him in the manner aforesaid, as by the * record and proceedings now remaining in his said majesty's court before our said lord the king at *Westminster* aforesaid may more fully appear: And the said *J.* further saith, that the said *W.* within six years
 G 3 next

* The plaintiff may reply a laticat sued out, and continue it down by vic' non misit breve, without concluding prout patet per recordum; for the laticat roll is only for the private use of the court, and no record. *Bottle v. Wood*, 2 Keb. 46.

next before the issuing out the said precept first abovementioned at *Westminster* aforesaid, took upon himself in manner and form as the said *J.* above complains against him; and this he is ready to verify: Wherefore he prays judgment and his damages, by reason of the not performing the said promises and undertakings, to be adjudged to him.

Rejoinder nul
tiel record.

And the said *W.* as before, saith, that the said *J.* by any thing by him above alledged in replying ought not to have or maintain his said action against him the said *W.* because he says, that there is not any such record of a precept in the said replication of the said *J.* first above-mentioned, and proceeding thereof assiled, or now remaining of record in his said present majesty's court before our said lord the king at *Westminster*, as the said *J.* in pleading by way of reply hath above alledged; and this the said *W.* is ready to verify: Wherefore, as before, he prays judgment, if the said *J.* ought to have his said action maintained against him.

Surrejoinder,
habetur tale
record'.

And the said *J.* saith, that there is such a record of the said precept in the said replication first above-mentioned, and proceedings thereof, now remaining in the court of our now lord the king before the king himself, as the said *J.* in his replication hath above alledged; and this he is ready to verify by the said record; and he prays that the said record may be by the said court here viewed and inspected: *But* because the court of our said lord the king now here is not yet advised

Continuance by
cur' advise
vult.

vifed about giving judgment of and concerning the premisses, day is therefore given to the said parties to come before our lord the king at *Westminster* until *Monday* next after the morrow of the ascension of our Lord, to hear judgment of and upon the same premisses, for that the court of our said lord the king now here is not yet advised thereof.

And the said *J. M.* by *W. M.* her attorney, comes and defends the wrong and injury, when, &c. and says, that she did not undertake and promise in manner and form as the said *T. P.* above declares against her; and of this she puts herself upon the country, &c. And the said *J.* by leave of the court here for this purpose first had and obtained according to the form of the statute in such case made and provided, further says, that the said *T.* ought not to have his said action against her, because she says that she did not promise or undertake, in manner and form as the said *T.* hath above complained against her, at any time within six years next before the day of exhibiting the aforesaid bill of him the said *T.* And this she is ready to verify: Wherefore she prays judgment, if the said *T.* ought to have or maintain his aforesaid action against her, &c. And for further plea in this behalf the said *J.* by like leave of the court here for this purpose first had and obtained according to the form of the statute in such case lately made and provided, says, that the said *T.* ought not to have or maintain his aforesaid

Plea: Non assumpsit; Non assumpsit infra sex annos; and a set off, viz. That plaintiff's testator and plaintiff as executor, are indebted to defendant in more money, &c.

action against her, because she says, that the said *J. P.* in his life-time and at the time of his decease was indebted to the said *J.* and the said *T.* as executor of the last will and testament of the said *J.* as aforesaid, at the time of exhibiting the bill aforesaid, was and still is indebted to the said *J.* in more money than is due or owing from her the said *J.* to the said *T. P.* as executor as aforesaid, upon or by reason of the said several promises and undertakings in the said declaration mentioned; that is to say, in the sum of four hundred pounds of lawful money of *Great Britain*, for so much money before that time lent and advanced by the said *J.* to the said *J.* in his life-time at his request, and also in the further sum of three hundred pounds of like lawful money for so much money before that time paid, laid out and expended by the said *J.* for the said *J.* in his life-time at his request; and also in the further sum of four hundred pounds of like lawful money for so much money before that time had and received by the said *J.* in his life-time for the use of the said *J.* and also in the further sum of two hundred pounds for work and labour performed and done by the said *J.* and her servants for the said *J. P.* in his life-time at his special instance and request; that is to say, at *Horsbam* aforesaid; which said several sums of money are still due and unpaid to the said *J.* and exceed the money due and owing from the said *J.* to the said *T. P.* as executor as aforesaid, upon or by reason of the said several promises

promises and undertakings in the said declaration mentioned, to wit, at *Horsham* aforesaid. And the said *J.* is ready and now offers to set off so much of the said several sums so due and owing to the said *J.* as aforesaid, as is sufficient to satisfy the money or damages justly due or payable to the said *T.* as executor as aforesaid, by reason of the said several promises in the said declaration mentioned. And this the said *J.* is ready to verify: And therefore prays judgment if the said *T.* ought to have or maintain his said action against her, &c.

J. Yates.

And the said *T.* as to the said plea of the said *J.* by her secondly above pleaded in bar, says, that notwithstanding any thing by the said *J.* in that plea above alledged he ought not to be barred from having his said action against her, because he says that the said *J.* did promise and undertake in manner and form as the said *T.* hath above complained against her within six years next before the day of exhibiting the said bill of the said *T.* to wit, at *Horsham* aforesaid; and this he prays may be inquired of by the country; and the said *J.* doth the like. And the said *T.* as to the said plea of the said *J.* by her lastly above pleaded in bar, says, that notwithstanding any thing by the said *J.* in that plea above alledged, he ought not to be barred from having or maintaining his said action against her, because, protesting that the

Replication.

the said *J. P.* in his life-time and at the time of his decease was not indebted to the said *J.* in manner and form as the said *J.* hath in and by her said plea above alledged; *Nevertheless* for replication the said *T.* says, that he the said *T.* as being executor of the last will and testament of the said *J.* was not nor is indebted to the said *J.* in more money than is due and owing from her the said *J.* to the said *T.* as executor as aforesaid, upon the said several promises and undertakings in the said declaration mentioned, as the said *J.* hath in and by her said plea in that behalf above alledged. And this also he prays may be inquired of by the country; and the said *J.* doth the like, &c.

Clench against Mullens. Mich. 16 Geo. 2.

Plea (to an action against the marshal for the escape of one in execution) That the prisoner broke the prison, and thereout and out of the custody of defendant against his will and without his knowledge escaped to places unknown, and

AND the said *R.* in his proper person comes and defends the wrong and injury, when, &c. and says, that the said *Edward Clench* ought not to have or maintain his said action against him the said *Richard*, because he saith that, after the said commitment of the said *Richard Garner* to the custody of the said *Richard* in execution for the damages aforesaid, at the suit of the said *Edward Clench* in form aforesaid made, to wit, on the 29th day of *August* in the sixteenth year of the reign of our said lord the king, the said *Elizabeth* being then in a certain prison called the *King's Bench* prison, situate in

in the parish of *St. George the Martyr* in the county of *Surrey*, in execution for the damages aforesaid, under the custody of the said *Richard* as aforesaid, she, the said *E.* upon the same day and year at the parish aforesaid in the county aforesaid, by force and arms broke the said prison, and out of the said prison and out of the custody of the said *Richard*, against the will of the said *Richard*, and without the knowledge of the said *Richard*, fled and escaped to places to the said *Richard* unknown. And the said *Richard* further saith, that before the day of exhibiting the said bill, and before the said *R.* had any notice of the said escape, that is to say, on the said 29th day of *August* in the said sixteenth year of the reign of our said lord the king, at the parish aforesaid in the said county, the said *E. G.* into the prison aforesaid, without the knowledge of the said *R. M.* returned, and continually after such return hitherto the said *E. G.* in the said prison under the custody of the said *R. M.* in execution for the damages aforesaid, at the suit of the said *E. C.* hath been detained, and is yet detained by the said *R. M.* which said escape of the said *E. G.* out of the said prison and out of the custody of the said *R. M.* so as aforesaid made, is the same escape for which the said *E. C.* hath above declared against him the said *R. M.* and this the said *R. M.* is ready to verify: Wherefore he prays judgment if the said *E. C.* ought to have or maintain

before exhibiting bill without defendant's knowledge returned, &c.

The commitment is custod. mar. in the Fleet to the prison of the Fleet, but the King's Bench is no local prison farther than is settled by the court.

This plea hath never been yet allowed in B. R. tho' it hath in C. B.

maintain his said action therefore against him the said R. M. &c.

R. Draper.

N. B. There must be an affidavit of the truth of this plea. *J. Strange. Stat. 8 & 9 W. 3. c. 27. §. 6.*

The above plea was pleaded in 16 Geo. 2. together with *nil debet*, with an affidavit of the verification of the said plea, but *quer.* discontinued the action, and paid costs. It was observed no place or *venue* was laid in the bill that the party escaped to, or any *venue* in the whole narrative.

N. B. This plea was pleaded *v. Mullens.* Cause tried *Trin.* 18 Geo. 2. and verdict *pro Q.* in B. R.

Chambers against Gambier.

Plea (to an action against the warden of the Fleet, for the escape of one in execution) That the prisoner broke the prison, and there out of the custody of the defendant escaped, and before exhibi-

AND the said James Gambier in his proper person comes and defends the force and injury, when, &c. and says, that the said William Chambers ought not thereon to have or maintain his said action against him the said J. G. because he says, that after the said commitment of the said E. Lampton to the said prison of the Fleet, under the custody of the said J. in execution for the damages aforesaid, at the suit of the said W. C. in form aforesaid made, to wit, on the 8th day of

February

February in the year of our Lord 1735. he ^{ting bill}
 the said *E. L.* being then in the prison of ^{without de-}
 the *Fleet* aforesaid, in execution for the da- ^{sendant's}
 mages aforesaid, under the custody of the ^{knowledge re-}
 said *J. G.* as aforesaid, he the said *E. L.* at ^{turned, &c.}
London aforesaid, within the parish of St. ^{The day of es-}
Bridget, otherwise *Brides*, in the ward of ^{cape laid in}
Farrington Without, then and there broke the ^{declaration.}
 said prison by force and arms, and out of the
 said prison and out of the custody of the said
J. G. against the will of the said *J. G.* and
 without the knowledge of the said *J. G.* into
 the said parish of St. *Mary le Bow*, in the
 ward of *Cheap, London*, aforesaid, and to
 places to the said *J. G.* unknown fled: And
 the said *J. G.* further says, that before the ^{Said to amount}
 day of exhibiting the said bill, and before ^{to a recaption}
 the said *J. G.* had any notice of the said ^{on fresh pursuit.}
 escape, that is to say, the said 8th day of *Fe-*
bruary aforesaid in the said year of our Lord *Hil. 3 G. 2.*
 1735. at *London* aforesaid, in the said parish *Gray v.*
 of St. *Bridget*, otherwise *Brides*, in the said *Gambier.*
 ward of *Farrington Without* aforesaid, the ^{Same plea}
 said *E. L.* into the prison aforesaid, without ^{allowed.}
 the knowledge of the said *J. G.* returned,
 and continually after such return hitherto the
 said *E. L.* in the said prison under the custody
 of the said *J. G.* in execution for the dama-
 ges aforesaid, at the suit of the said *W. C.*
 hath been detained, and is yet detained by
 the said *J. G.* which said escape of the said
E. L. out of the said prison and out of the
 custody of the said *J. G.* so as aforesaid
 made, is the same escape for which the said
W. C.

W. C. hath above declared against him the said *J. G.* and this the said *J. G.* is ready to verify: Wherefore he prays judgment if the said *W. C.* ought to have or maintain his said action therefore against him the said *J. G.* &c.

W. Hawkins.

Ball against Briggs.

DEBT *sur* escape, plea fresh pursuit and recaption same day bill filed, adjudged no plea, the action being attached in *Quer.* 1 *Jon.* 145. *Ca. W.* 3. *B. R.* 31.

Mullens against Wall.

Demurrer to a declaration against the marshal for an escape.

AND the said *Richard* in his own proper person cometh and defendeth the force and injury, when, &c. and saith, that the said declaration in manner and form aforesaid above made, and the matter therein contained, are not sufficient in law for the said *Edward* to have and maintain his said action against the said *Richard*, to which said declaration the said *Richard* hath no need, nor is he obliged by the law of the land to answer; and this he is ready to verify: Wherefore for want of a sufficient declaration in this behalf, the said *Richard* prays judgment if the said *Edward* ought to have or maintain his said action against him; and for causes of

demurrer

demurrer in law, in this behalf, the said *Richard*, according to the form of the statute in such cases lately made and provided, shews to the court here these causes following, that is to say, For this * that it is not alledged in the said declaration that there is *any record of commitment* of the said *William Addison* to the custody of the said *Richard* as marshal of the *Marshalsea* of the said lord the king, before the king himself; nor is it alledged in the said declaration that any such commitment of the said *W. A.* appears or remains of record in the said court of the said lord the king before the king himself; and also for that the said declaration is uncertain and wants form, &c. *Cause of demurrer.*

R. Draper.

And the said *Edward* prayeth leave to *imparle* to the said plea until † *Saturday* next after three weeks from the day of *St. Michael*, and then to answer the same, &c. and it is granted, &c. And thereupon the same day is given to the parties aforesaid, to come before our lord the king at *Westminster*; at which day, as well the said *Edward* doth come by his said attorney, as the said *Richard* in his proper person. And the said *Edward* *joinder in demurrer.* saith that, notwithstanding any thing by the said *Richard* above alledged, he ought not to be

* Vide *Infra* p. —, —.

† No such return. See *Vol. 1. p. —*.

be barred from having his said action maintained against the said *Richard*, because he saith, that the said declaration, and the matter therein contained, are good and sufficient in law for him the said *Edward* to maintain his said action against the said *Richard*; which said matter contained in the said declaration the said *E.* is ready to verify and prove in such manner as the court shall think fit, and because the said *R.* hath made no answer to the said declaration, nor in any wise denied the same, the said *E.* prays judgment, and that his damages occasioned by the premises may be adjudged to him, but because the said court of, &c. [Continuance by *cur. advisar. vult.*]

N. B. Amended on payment of costs.

John Stracey.

Mullens against Wright.

Causes of demurrer to a like declaration.

UT *supra to*, that is not alledged in the said declaration, that there is any record of the commitment of the said *Robert Wright* on the last mentioned writ of *Habeas Corpus cum causa*, and the return thereof to the custody of the said *Richard* as marshal of the *Marshalsea* of the said lord the king before the king himself: Nor is it alledged in the said declaration, that the said last mentioned writ of *Habeas Corpus* and the return thereof, and the commitment of the said *R. W.* thereupon, appear, or remain of record in the said court of the said lord the king, before the

the king himself; and that it doth not appear by the said declaration, that there is any attorney named upon record for the said *G.W.* and also for that, &c. (*ut supra.*)

Tho. Vaughan, jun.

Trin. 25 & 26 Geo. 2.

AND the said *James Cobb* by *R. R.* his attorney, comes and defends the wrong and injury, when, &c. and says, the said *Catherine Treadway* ought not to have her said action against him, because he says, that he has no goods or chattels which were of the said *George Treadway* at the time of his death, in his hands to be administered; nor had on the day of exhibiting the aforesaid bill, nor at any time before or afterwards, except goods and chattels to the value of 25 *l.* and this the said *James* is ready to verify: Wherefore he prays judgment if the said *Catherine* ought to have or maintain her action aforesaid against him, except for the said 25 *l.* &c.

John Ford.

And the said *Sarah Bascom*, by *Thomas Owens* her attorney, comes and defends the wrong and injury, when, &c. and saith, that the said *William Pollard* ought not to have or maintain his said action against her, because she saith, that the said *Matthias Bascom* in his life-time, to wit, on the 6th day of January

*pendant the
executor, et
plene admini-
stravit præter,
&c.*

mary in the year of our Lord 1729. at *Westminster* aforesaid, by a certain writing obligatory sealed with his seal, and then and there delivered as his deed for a true and just debt, acknowledged himself to be held and firmly bound to one *William Bowles* esq; in 276*l.* of lawful money of *Great Britain*, to be paid to the said *W. B.* when he should be thereunto afterwards required; which said writing obligatory at the time of the death of the said *M.* was in its full force and virtue, not satisfied, discharged or cancelled. *Whereupon* the said *W. B.* for recovering his said debt, after the death of the said *M.* to wit, in this present term of *St. Mich.* in the 14th year of the reign of our said lord the king, in the court of our said lord the king, before Sir *J. W.* knt. and his companions then justices of our said lord the king of the bench at *Westminster* aforesaid, impleaded the said *Sarah* upon the writing obligatory aforesaid, as executrix of the last will and testament of the said *M.* of a plea of debt for the said 276*l.* in which said plea such proceedings were had in the said court of our said lord the king of the bench, that afterwards, to wit, in this same *Michaelmas* term, the said *W. B.* in the same court, by the consideration of the same court, recovered against the said *Sarah* as well the said debt of 276*l.* as 50*s.* which were adjudged to the said *W.* in the same court for his damages, which he had sustained by reason of the detaining the said debt, to be levied of the goods and chattels which

which were of the said *M.* at the time of his death, in the hands of the said *Sarah* to be administered, if she had so much thereof in her hands to be administered, and if she had not so much thereof in her hands to be administered, then the damages aforesaid to be levied of the proper goods and chattels of the said *Sarah*, whereof she is convicted, as by the record of the said judgment now remaining in the court of our said lord the king of the bench at *Westminster* aforesaid, more fully appears; which said judgment so as aforesaid had and obtained upon the said writing obligatory, was so had and obtained for a true and just debt, due and owing to the said *W. A.* by the said *M.* at the time of his death, upon the writing obligatory aforesaid. *And* the said judgment yet remains in its full force and effect, not reversed, annulled, discharged or satisfied. *And* the said *S.* further saith, that she hath fully administered all and singular the goods and chattels, which were of the said *M.* at the time of his death, in her hands to be administered, except goods and chattels to the value of 5 *l.* And that she hath not, nor on the day of exhibiting the said bill of the said *W. P.* or ever after had, any goods or chattels which were of the said *M.* at the time of his death, in her hands to be administered, except goods and chattels to the value of the said 5 *l.* which are liable towards the satisfaction of the money due upon the said judgment here above-mentioned; and this the said *S.* is ready to verify: Wherefore she prays judgment if the said *W.*

H 2

P.

P. ought to have or maintain his said action against her, &c.

Tho. Denison.

Plea in trespass.

Quoad vi & armis, &c.

Not guilty.

Issue.

As to the residue, that one C. C. was seised of a mesuage and meadow, and he, and all whose, &c. had a way from the mesuage to the meadow thro' the Locus in quo, &c.

*And the said John Jones, by A. B. his attorney, comes and defends the force and injury, when, &c. And as to the coming with force and arms, and whatever is against the peace of the said lord the king, says, that he is not thereof guilty: And thereupon he puts himself upon the country. And the said W. does so likewise. And as to the residue of the said trespass, above supposed to be done, the said John says, that the said William ought not therefore to have or maintain his said action against him, because he says, that Charles Colborne esquire, long before the said first time when, &c. was seised in his demesne as of fee, of and in a certain mesuage and a certain meadow called ———, with the appurtenances, situate, lying and being in the parish aforesaid; and the said Charles, and all those whose estate he had and has in the said mesuage and meadow called ———, with the appurtenances, from time whereof the memory of man is not to the contrary, have had and used, and have been used and accustomed, and of right ought to have and use, a certain way as well on foot as on horseback, as for their carts and carriages, and for the driving of their cattle from the said mesuage, with the appurtenances, into, through and over the said close called *Dogbillock-field*, in which, &c. into the said meadow called ———,*

—, and back again from the said meadow called —, into, through and over the said close called *Dogbillock-field*, in which, &c. in the said way there to the said mesuage, with the appurtenances, every year at all times of the year, when and as often as occasion required, for the use and enjoyment of the said meadow called —, and the perception of the profits thereof. And the said C. being *C. leased to defendant.* so seised of the said mesuage and meadow called —, with the appurtenances as aforesaid, he the said C. long before the said first time, when, &c. to wit, on the 26th day of *March* in the year of our Lord 1738. at the parish aforesaid, demised the said mesuage and meadow called —, with the appurtenances, to the said J. Jones, to have and to hold to the said J. Jones from the feast of the Annunciation of the Blessed Virgin *Mary* then last past, for and during one whole year, and from the end of that year from year to year, at the will of the said C. and J. Jones. By virtue of which said demise, *Defendant entered.* he the said J. Jones entered into the said demised mesuage and meadow called —, with the appurtenances, and from thenceforth hitherto has been and still is possessed thereof; and being so possessed thereof, he the *Defendant* said J. J. on the said 10th day of *December* *used the said way.* in the said 13th year of the reign of our said lord the king, and at divers other days and times between that day and the said 15th day of *January* in the said 14th year of the reign of our said lord the king, went on foot with

his said cattle in the said declaration mentioned, and with his said carts and carriages therein also mentioned, drawn by the said horses, mares, geldings and oxen, from his said mesuage, with the appurtenances, into, through and over the said close called *Dog-billock-field*, in which, &c. in the said way there into his said meadow called ———, and back again from his said meadow called ———, into, through and over the said close, in which, &c. in the said way there to his said mesuage, with the appurtenances, for the use and enjoyment of the said meadow called ———, and for the perception of the profits thereof, as it was lawful for him to do; and in so doing, he the said *John Jones* necessarily trod down, and consumed with his feet in walking, a little of the said grass and corn then growing in the said way in the said close, in which, &c. and broke up, subverted, spoiled and consumed, with the wheels of the said carts and carriages, the soil of the close, in which, &c. in the said way there, and the said other grass and corn growing in the said way there; and the said cattle in their passage through the said close, in which, &c. on the occasion aforesaid, did necessarily tread down with their feet a little of the said grass and corn then growing in the said way, in the said close, in which, &c. and against the will of the said *J. Jones* snatched, and eat up and consumed a little more of the said grass and corn growing in the said way there, and

and on the sides thereof; and the said *J. Jones*, in the said use and enjoyment of his said way in and through the said close, in which, &c. did as little damage to the said *William* as he could; which said breaking and entering of the said close, in which, &c. and the treading down and consuming with his feet in walking the said grass and corn there growing, and the eating up, treading down and consuming with the said cattle the said other grass and corn there growing, and the breaking up, subverting, spoiling and consuming with the said wheels of carts and carriages the said soil of the said close, in which, &c. and the said other grass and corn there likewise growing in manner aforesaid, and for the cause aforesaid done, are the residue of the said trespass, of which the said *William* hath above complained against him; and this he is ready to verify: Wherefore he prays judgment, if the said *William* ought therefore to have or maintain his said action against him, &c.

S. Bonnet.

Case.

Of the term of St. Michael in the eighth year of the reign of king George the third.

Indorsee of a Middlesex, R. R. complains of O. B. gent. promissory note to wit, being in the custody of the against the marshal of the Marlhalsea drawer.

25 Sept. 1727. Note made. the twenty-fifth day of *September* in the year of our Lord one thousand seven hundred and twenty-seven, at *Westminster* in the said county, made a certain note in writing subscribed with his own hand, commonly called a promissory note, bearing date the same day and year last mentioned, by which note the said O. promised to pay to Mrs. *H. S.* or her order, *four months* after the date of the said note, the sum of ten pounds for value received by the said O. and the said sum of money being unpaid, the said *H. S.* afterwards, to wit, on the twenty-eighth day of *September* in the year last aforesaid, at *Westminster* aforesaid in the said county, indorsed the said note, her own hand being thereunto subscribed, and by the said indorsement appointed the contents of the said note to be paid

Payable in 4 months.

Indorsed.

paid to *S. A.* or his order, for value received; and the said sum of money being unpaid, the said *S.* afterwards, to wit, on the thirtieth day of *September* in the year last aforesaid, at *Westminster* aforesaid in the said county, indorsed the said note, his own hand being *Indorsed again.* thereunto subscribed, and by the said indorsement appointed the contents of the said note to be paid to the said *R.* or his order, for value received by the said *S.* * of which premisses the said *O.* afterwards, and after the end of the said four months, to wit, on the first day of *May* in the year of our Lord one thousand seven hundred and thirty-two, at *Westminster* aforesaid in the said county, had *1 May 1732.* notice; and by reason of the premisses, and *Notice to defendant.* by force of the statute in that case lately made and provided, the said *O.* became liable to pay to the said *R.* the said sum of money contained

* Case *sur assumpsit* on a promissory note, whereby the defendant promised to pay to *W. W.* or order 50 *l.* for value received, which note was indorsed by *W.* to the plaintiff. Demurrer, for that it is not alleged that the defendant had notice of the indorsement. *Lawrence v. Jacob*, 1 *M. Cases* 43. cited. *Curia*: The case is misreported, the judgment was affirmed. On the authority of that case, and on the reason of the thing; for the defendant by his demurrer admits that in consideration of the premisses, *viz.* defendant's making the indorseable note, and the indorsing it to the plaintiff, the defendant assumed to pay the money according to the tenor of the note; judgment was given for the plaintiff. *Pas.* 10 *Geo.* 2. *C. B.* *Skip v. Hook*, *intr. Hil.* 10 *Geo.* 2. *ro.* 369. *Comyns* 563. Vide 1 *Vol.*

contained in the said note; and being so liable, he the said O. afterwards, to wit, on the day and year last above-mentioned, at *And assumpsit.* *Westminster* afore said in the said county, assumed upon himself, and then and there faithfully promised the said R. that he the said O. would pay to the said R. the said sum of money when he should be requested to pay the same: And whereas the said O. afterwards, to wit, on the said twenty-fifth day of *25 Sept. 1727.* *September* in the year of our Lord one thousand seven hundred and twenty-seven afore said, at *Another note.* *Westminster* in the said county, made a certain other note in writing, subscribed with his own hand, commonly called a promissory note, bearing date the same day and year last above said, by which note the said O. promised to pay to the said Mrs. H. S. or her order, *four months after* the date of the said note, the sum of ten pounds *for value received* by the said O. and the said sum of money last mentioned being unpaid, the said H. S. afterwards, to wit, on the twenty-eighth day of *September* in the year last afore said, at *Indorsed.* *Westminster* afore said in the said county, indorsed the said note, her own hand being thereunto subscribed, and by the said indorsement appointed the contents of the said last mentioned note to be paid to S. A. or his order, for value received; and the said sum of money being unpaid, the said S. afterwards, to wit, on the thirtieth day of *September* in the year last afore said, at *Indorsed again.* *Westminster* afore said in the said county, indorsed the said

said note, his own hand being thereunto subscribed, and by the said indorsement appointed the contents of the said note to be paid to the said R. or his order, for value received by the said S. of which premisses the said O. afterwards, to wit, on the same day and year last aforesaid, at *Westminster* aforesaid, had notice; and by reason of the premisses, and by force of the statute in that case lately made and provided, the said O. became liable to pay to the said R. the said sum of money contained in the said last mentioned note, according to the form and effect of the said note, and the said sum of money last mentioned being unpaid, the said O. in consideration of the premisses, afterwards, to wit, on the tenth day of *May* in the year of our Lord one thousand seven hundred and thirty-three, at *Westminster* aforesaid in the said county, paid to the said R. part, to wit, the sum of five pounds of the said ten pounds last mentioned, and assumed upon himself, and then and there faithfully promised the said R. that he the said O. would pay to the said R. the residue of the said sum of money contained in the said last mentioned note, when he should be thereunto afterwards requested: Nevertheless the said O. not regarding his said several promises and undertakings so made as aforesaid, but contriving and fraudulently intending to deceive and defraud the said R. in this behalf, hath not paid to him the said R. the first abovementioned sum of money, or any part thereof, or the residue

10 May 1733.

Defendant

pays part, and

assumpsit for

the rest.

Breach.

of the said last above-mentioned sum of money, or any further part thereof, (although the said O. afterwards, to wit, on the first day of *October* in the year of our Lord one thousand seven hundred and thirty-five, at *Westminster* aforesaid, was requested by the said R. to pay him the same) but has hitherto wholly refused, and still doth refuse to pay the same to the said R. to the damage of the said R. of twenty pounds; and thereupon he brings suit, &c.

Pledges of prosecuting { *John Doe,*
and
Richard Roe.

Trin. 8 & 9 Geo. 2.

Indeb. ass. for *London*, *M. R.* complains of *J. N.* in the custody of the marshal, &c. for the freight of goods and merchandizes. to wit, that, to wit, that whereas the said *J.* on the first day of *March* in the year of our Lord one thousand seven hundred and thirty-four, at *London* aforesaid, to wit, in the parish of *St. Mary le Bow* in the ward of *Cheap*, was indebted to the said *M.* in fifty pounds of lawful money of *Great Britain*, for the freight of divers goods and merchandizes, before that time carried by the said *M.* in his vessel for the said *J.* at the special instance and request of the said *J.* and for other labour, work and service before that time done and performed by the said *M.* for the said *J.* at the like special

cial instance and request of the said *J.* and being so indebted, he the said *J.* in consideration thereof, afterwards, to wit, on the same day and year, at *London* aforesaid in the parish and ward aforesaid, did assume upon himself, and then and there faithfully promise the said *M.* that he the said *J.* would pay to the said *M.* the said sum of money when the said *J.* should be requested to pay the same: And whereas the said *J.* afterwards, to wit, on the same day and year, at *London* aforesaid in the parish and ward aforesaid, in consideration that the said *M.* at the like special instance and request of the said *J.* had before that time carried divers other goods, wares and merchandizes on board another vessel of the said *M.* for the said *J.* and also had before that time, at the like special instance and request of the said *J.* done and performed other labour, work and service for the said *J.* did assume upon himself, and then and there faithfully promise the said *M.* that he the said *J.* would pay to the said *M.* so much money as he therefore reasonably deserved to have, when the said *J.* should be requested to pay the same; and the said *M.* in fact says, that he did therefore reasonably deserve to have of the said *J.* other fifty pounds of like lawful money of *Great Britain*, to wit, at *London* aforesaid in the parish and ward aforesaid, of which the said *J.* had then and there notice: *Nevertheless* the said *J.* not regarding his said several promises and undertakings, so made as aforesaid

Quantum mer-
ruit for the
freight of
goods and mer-
chandizes.

Breach.

said, but contriving and fraudulently intending to deceive and defraud the said *M.* in this behalf, hath not paid to him the said several sums of money, or any of them, or any part thereof, although to pay the same to him the said *M.* he the said *J.* afterwards, that is to say, the same day and year aforesaid, at *London* aforesaid in the parish and ward aforesaid, was requested by the said *M.* but the said *J.* to pay the same to him hath hitherto altogether refused, and doth yet refuse, to the damage of the said *M.* of sixty pounds; and therefore he brings suit, &c. pledges, &c.

*Easter term in the eighth year of the
reign of king George the third.*

Ventris.

*By an attorney Middlesex, J. D. gent. one of the attornies of
indeb. ass. for to wit, J. the court of the lord the king,
business done, before the king himself being, according to
money laid out, the liberty and privilege of such attornies of
and for fees. the same court, from the time whereof the
memory of man is not to the contrary, used
and approved of in the same, present here
in court in his proper person, complains of
S. A. and H. C. in the custody of the marshal
of the Marshalsea of the lord the king, be-
fore the king himself being, For that whereas
the said S. and H. on the first day of January
in the year of our Lord one thousand seven
hundred and thirty-four, at Westminster in the
county*

county of *Middlesex*, were indebted to the said *J.* in fifty pounds of lawful money of *Great Britain*, for work and labour as an attorney and solicitor, before then done and performed by the said *J.* upon the retainer *Upon retainer.* and at the special instance and request of the said *S.* and *H.* in and about the prosecuting, defending and soliciting of divers causes, suits and businesses, and for money laid out, expended and paid by the said *J.* at the like instance and request of the said *S.* and *H.* in and about the prosecuting, defending and soliciting of those causes, suits and businesses, and for the money due to the said *J.* for his fees due and of right payable to him in that respect; and being so indebted, they the said *S.* and *H.* in consideration thereof, afterwards, to wit, on the same day and year at *Westminster* aforesaid, assumed upon themselves, and then and there faithfully promised the said *J.* that they the said *S.* and *H.* would pay to the said *J.* the said sum of money when requested to pay the same: *And whereas* the said *S.* and *H.* afterwards, to wit, on the same day and year, at *Westminster* aforesaid, in consideration that the said *J.* upon their retainer, and at their like instance and request, had done and performed other work and labour as an attorney and solicitor in and about the prosecuting, defending and soliciting divers other causes, suits and businesses, and laid out, expended and paid other money in and about the prosecuting, defending and soliciting of those causes, suits and businesses, assumed upon

Quantum meruit for business done as an attorney on retainer, money laid out, and for fees.

on

on themselves, and then and there faithfully promised the said *J.* that they the said *S.* and *H.* would pay to the said *J.* so much money as he reasonably deserved to have for his last mentioned work and labour, and so much money as he had so laid out, expended and paid in and about the said prosecuting, defending and soliciting the said last mentioned causes, suits and businesses; and so much money as was due to the said *J.* for his fees due and of right payable to him in that respect, when the said *S.* and *H.* should be thereunto requested: And the said *J.* avers, that he reasonably deserved to have of the said *S.* and *H.* for his last mentioned work and labour, other fifty pounds of like lawful money; and that he had so laid out, expended and paid in and about the said prosecuting, defending and soliciting the said last mentioned causes, suits and businesses, thirty pounds of like lawful money; and that twenty pounds of like lawful money were due to the said *J.* for his fees due and of right payable to him in that respect, to wit, at *Westminster* aforesaid, whereof the said *S.* and *H.* then and there had notice: *And whereas* also the aforesaid *S.* and *H.* afterwards, to wit, on the same day and year at *Westminster* aforesaid, were indebted to the said *J.* in eighteen pounds of like lawful money for the like sum of money by the same *J.* at the special instance and request of the said *S.* and *H.* before that time expended, laid out, disbursed and paid; and being so indebted, the said *S.*

*Indeb. aff. for
money laid out
and expended.*

S. and H. afterwards, to wit, the same day and year at *Westminster* aforesaid, in consideration thereof assumed upon themselves, and to the same J. then and there faithfully promised, that they the said S. and H. the same eighteen pounds to the same J. when they should be thereto afterwards requested, would well and truly pay and content: *Breach.* Yet the said S. and H. in no wise regarding their said several promises and assumptions made in form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said J. in this respect, have nor, nor either of them hath paid to the said J. the said several sums of money, or any part thereof, (although the said S. and H. afterwards, to wit, on the fifth day of *January* in the same year at *Westminster* aforesaid, were requested by the said J. to pay him the same) but have hitherto refused, and still do refuse to pay the same to the said J. to the damage of the said J. of sixty pounds: And thereupon he brings suit, &c.

D. in person.

——— for the defendants.

Pledges to prosecute { *John Doe,*
and
Richard Roe.

Easter term in the seventh year of king
George the third.

*Declaration on
promissory note
by joint indor-
sees against the
drawer.*

London, *A. C.* and *J. C.* complain of *C. K.*
to wit, *A.* in the custody of the marshal,
&c. For that whereas the said *C.* on the
twelfth day of November in the year of our
Lord one thousand seven hundred and sixty-
seven, at London aforesaid, to wit, in the pa-
rish of St. Mary le Bow in the ward of Cheap,
made his note in writing, commonly called a
promissory note, subscribed with his own pro-
per hand, bearing date the same day and year,
and then and there delivered the said note to
one *A. D.* and by the said note the said *C.*
promised to pay to the said *A.* or his order,
twelve months after the date of the said note,
three hundred and forty-seven pounds, *for*
value received by him the said *C.* which said
A. afterwards, and before the time limited for
the payment of the said three hundred and
forty-seven pounds by the said note, to wit,
on the day and year abovesaid, at London
aforesaid, in the parish and ward aforesaid,
by his indorsement subscribed with his own
proper hand upon the same note, appointed
the contents of the said note, to wit, the said
three hundred and forty-seven pounds, to be
paid to the said *A.* and *J.* for value received;
of which premisses the said *A.* and *J.* after-
wards, to wit, on the day and year abovesaid,
at London aforesaid, in the parish and ward
aforesaid,

Indorsement.

aforesaid, gave notice to the said C. by reason whereof, and by force of the statute in such case made and provided, the said C. became liable to pay to the said A. and J. the said three hundred and forty-seven pounds, according to the tenor of the said note: And the said C. being so liable afterwards, to wit, on the day and year abovesaid, at *London* aforesaid in the parish and ward aforesaid, in consideration thereof undertook, and then and there faithfully promised the said A. and J. to pay them the said three hundred and forty-seven pounds, according to the tenor of the said note: *And whereas* the said C. afterwards, *Indeb assump.* to wit, on the first day of *January* in the year *for money received to the plaintiff's use.* of our Lord one thousand seven hundred and sixty-seven, at *London* aforesaid, in the parish and ward aforesaid, was indebted to the said A. and J. in other three hundred and forty-seven pounds of lawful money of *Great Britain*, for monies by him the said C. before that time had and received to the use of them the said A. and J. and the said C. being so indebted in that behalf, afterwards, to wit, on the day and year last abovesaid, at *London* aforesaid, in the parish and ward aforesaid, in consideration thereof undertook, and then and there faithfully promised the said A. and J. to pay them the said three hundred and forty-seven pounds last mentioned: *Nevertheless* the said C. not regarding his several promises and undertakings aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said A. and J. *Breach.*

in these respects (altho' he hath been often requested) hath not paid the said several sums of money, or any part thereof, to the said *A.* and *J.* but hath wholly refused and still doth refuse to pay the same to them, to the said *A.* and *J.* their damage of three hundred and seventy pounds: And thereupon they bring suit, &c.

R. C. Attorney for the plaintiffs.

C. B. Attorney for the defendants.

Pledges of prosecuting, $\left\{ \begin{array}{l} \text{John Doe,} \\ \text{to wit,} \quad \text{and} \\ \text{Richard Roe.} \end{array} \right.$

Michaelmas term in the eighth year of king
George the third.

B. R. declaration sur assumpsit against an executrix. Indeb. ass. by testator for money had and received. *London, E. H.* esq; complaineth of *K. M.* executrix of the last will and testament of *H. M.* her late husband, deceased, for this, to wit, that *whereas* the said *H.* in his life time, to wit, the twenty-ninth day of *March* in the year of our Lord one thousand seven hundred and sixty-eight, at *London* aforesaid in the parish of *St. Michael Cornhill* in the ward of *Cornhill*, was indebted to the said *E.* in six hundred and fifty pounds of lawful money, for the like sum of money by the said *H.* in his life-time for the said *E.* and to the use of the said *E.* before that time had and received; and being thereupon so indebted he

the said *H.* in his life-time, in consideration thereof afterwards, to wit, the same day and year at *London* aforesaid in the parish and ward aforesaid, took upon himself, and to the said *E.* then and there faithfully promised, that he the said *H.* the aforesaid six hundred and fifty pounds to the said *E.* when he should be thereunto required, would well and truly pay and satisfy: *And whereas* afterwards, to wit, *The like for money laid out.* the same day and year at *London* aforesaid in the parish and ward aforesaid, he the said *H.* in his life-time was indebted to the said *E.* in other six hundred and fifty pounds of like lawful money, for so much money by the said *E.* for the said *H.* in his life-time, and at his special instance and request before that time paid, laid out and expended; and being thereupon so indebted he the said *H.* in his life-time, in consideration thereof, afterwards, to wit, the same day and year at *London* aforesaid in the parish and ward aforesaid, took upon himself, and to the said *E.* then and there faithfully promised to pay to the said *E.* the said six hundred and fifty pounds last mentioned, when he should be thereunto afterwards required: *And whereas* also afterwards, to wit, the same day and year at *London* aforesaid, in the parish and ward aforesaid, the said *H.* in his life-time and the said *E.* accounted together between themselves of and concerning divers other sums of money by the said *H.* in his life-time to the said *E.* before that time owing, and then being in arrear and unpaid, and upon that account he the said *H.*

Infimul computass plaintiff and testator.

then and there was found in arrear towards the said *E.* in two hundred thirty and eight pounds three shillings and eleven pence of like lawful money; and being thereupon so found in arrear he the said *H.* in his life-time, in consideration thereof, afterwards, to wit, the same day and year at *London* aforesaid in the parish and ward aforesaid, took upon himself, and to the said *E.* then and there faithfully promised to pay to the said *E.* the said two hundred thirty and eight pounds three shillings and eleven pence, when he should be afterwards thereunto required: *Nevertheless* the said *H.* in his life-time, and the said *K.* since the death of the said *H.* not regarding the promises and undertakings of the said *H.* in his life-time made as aforesaid, but contriving and fraudulently intending the said *E.* in this behalf craftily and subtilly to deceive and defraud, the aforesaid several sums of money, or any part thereof, to the said *E.* have not paid, nor hath either of them paid, nor hitherto in any wise satisfied him for the same, (although to do the same the said *H.* in his life-time afterwards, to wit, the same day and year, and the said *K.* since the death of the said *H.* to wit, the first day of *October* in the seventh year of the reign of his present majesty king *George* the third, at *London* aforesaid in the parish and ward aforesaid, by the said *E.* was requested) but the same to the said *E.* they the said *H.* in his life-time, and the said *K.* since the death of the said *H.* have utterly refused to pay, and the said *K.*
doth

Breach.

doth still refuse to pay: Wherefore the said *E.* saith that he is hurt and damaged to the value of seven hundred pounds; and therefore brings his suit, and prays the aid and assistance of this honourable court.

T. H. for the plaintiff.

————— for the defendant.

Pledges to prosecute } *John Doe,*
and
} *Richard Roe.*

Michaelmas term in the fifteenth year of
the reign of king George the second.

London, **B**E it remembered, that heretofore, Memorandum
to wit, **B** that is to say, in the term of the of a precedent
Holy Trinity last past, *W. S.* came before our term.
lord the king at *Westminster* by *J. F.* his at-
torney, and brought into the court of our
said lord the king then there his bill against
T. M. and *M.* his wife, executrix of the last
will and testament of *T. R.* deceased, being
in the custody of the marshal of the *Marshalsea*
of our sovereign lord the king, before the
king himself, in a plea of trespass on the case;
and there are pledges for the prosecution, to
wit, *John Doe*, and *Richard Roe*; which said
bill follows in these words, that is to say,
London, to wit, *W. S.* complains of *T. M.* Declaration
and *M.* his wife, executrix of the last will against baron
and testament of *T. R.* deceased, being in the and some, ex-
custody of the marshal of the *Marshalsea* ecutrix, on a
by testator.

*Recital of ar-
ticles of ap-
prenticeship.*

custody of the marshal of the *Marshalsea* of our sovereign lord the king, before the king himself, for that *whereas* by certain articles of agreement made and agreed upon the sixteenth day of *May* in the year of our Lord one thousand seven hundred and thirty-nine, at *London*, that is to say, at the parish of *St. Mary le Bow* in the ward of *Cheap*, between the said *W. S.* of the one part, and one *R. S.* of *London*, mariner, of the other part, the said *W. S.* for himself, his executors and administrators, did covenant, promise and agree to and with the said *R. S.* in manner and form following, that is to say, that he the said *W. S.* for and in consideration of the sum of forty-two pounds of lawful money of *Great Britain*, to be to him in hand paid by the said *R. S.* in manner following, that is to say, twenty-one pounds, part thereof, on or before the executing of the said articles, and the remaining sum of twenty-one pounds, at the expiration of two years, to commence from the day of the date of the said articles, should and would well, truly and fully teach and instruct, or cause to be taught and instructed the said *R. S.* in the trade, art or mystery of a frame-work knitter, which he then used, after the best way and manner that he could within the term or time of two years, to commence from the day of the date of the said articles, and also find, provide and allow the said *R. S.* good and wholesome meat, drink, washing and lodging during the said term of two years, which he the said

said *R. S.* had agreed to live or continue with the said *W. S.* and the said *R. S.* for the considerations aforesaid, by the said articles did covenant, promise and agree to and with the said *W. S.* his executors and administrators, that he the said *R. S.* would during the said term of two years well, truly and honestly demean himself towards the said *W. S.* and also should and would, at the end or expiration of the said term of two years in the said articles above named, if he should so long live, pay or cause to be paid unto the said *W. S.* his executors or administrators, the said sum of twenty-one pounds so agreed to be by him paid as aforesaid: Also by the said articles it was mutually covenanted, concluded and agreed between the said parties, that the said sum of twenty-one pounds, so agreed to be afterwards paid by the said *R. S.* should, on the day of the date of the said articles, be placed out at interest for the benefit of the said *R. S.* in the hands of the said *T. R.* (if he should be willing to receive it) until the same should become due and payable to the said *W. S.* his executors or administrators; and if the said *R. S.* should happen to die between the first and second year of the said term of two years in the said articles before-mentioned, and not otherwise, that then and in such case the said sum of twenty-one pounds, thereby agreed to be deposited in the hands of the said *T. R.* as aforesaid, should be by him on demand paid to the said *W. S.* his executors or administrators; any thing in the said articles

Money being deposited in the testator's hands, to be paid to the plaintiff upon a contingency.

Testator promised to pay the same accordingly.

articles before contained to the contrary thereof in any wise notwithstanding: And whereas afterwards, to wit, on the said sixteenth day of *May* in the year aforesaid, at *London* aforesaid in the parish and ward aforesaid, in pursuance of the said articles of said sum of twenty-one pounds therein last-mentioned, at the special instance and request of the said *T. R.* in his life-time, by the direction and with the consent of the said *W. S.* was placed out and deposited in the hands of the said *T. R.* by the said *R. S.* in the said articles named, and the said *T. K.* then and there received the same from the said *R. S.* for the purpose in the said articles mentioned, according to the true intent and meaning of the same articles; in consideration thereof he the said *T. R.* afterwards in his life-time, to wit, on the twenty-first day of *May* in the year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, took upon himself, and then and there faithfully promised the said *W. S.* to pay him the said *W. S.* the said sum of twenty-one pounds at the time mentioned in the said articles, in case the said *R. S.* did not depart this life before he had served one year of his time mentioned in the said articles: And the said *W.* doth aver, that the said *R. S.* in the said articles named did not depart this life before he had served one year of his time mentioned in the said articles, but is still alive, to wit, at *London* aforesaid, in the parish and ward aforesaid, of which the said *T. M.* and *M.* after the death of the said *T. R.*

T. R. and after their intermarriage, to wit, on the twenty-eighth day of *May* in the year of our Lord one thousand seven hundred and forty-one there had notice; whereby the same sum of twenty-one pounds, at the expiration of the said two years mentioned in the said articles, being after the death of the said *T. R.* become due and payable by the said *T. M.* and *M.* after their intermarriage to the said *W.* And whereas the said *T. R.* in his life-time, to wit, on the said twenty-first day of *May* in the said year of our Lord one thousand seven hundred and thirty-nine, at *London* aforesaid, in the parish and ward aforesaid, in consideration that the said *R. S.* at the special instance and request of the said *T. R.* and by the direction and appointment of the said *W. S.* had deposited and placed in the hands of the said *T. R.* another sum of twenty-one pounds, mentioned to be paid in certain other articles between the said *W.* and *R. S.* bearing date the sixteenth day of *May* then last past, took upon himself, and then and there faithfully promised the said *W.* to pay him the said *W.* the said sum of money last mentioned at the time mentioned in the last mentioned articles, in case the said *R. S.* did not depart this life before he had served one year of his time mentioned in the same articles; and the said *W.* doth aver, that the said *R. S.* did not depart this life before he had served one year of his time mentioned in the last mentioned articles, but is still alive, and that the time mentioned in the same articles for the payment

payment of the said last mentioned sum of twenty-one pounds, was expired on the sixteenth day of *May* in the year of our Lord one thousand seven hundred and forty-one, after the death of the said *T. R.* and after the intermarriage of the said *T. M.* and *M.* to wit, at *London* aforesaid in the parish and ward aforesaid, of which the said *T. M.* and *M.* afterwards, to wit, on the said twenty-eighth day of *May* in the said year of our Lord one thousand seven hundred and forty-one there had notice, whereby the said sum of twenty-one pounds last mentioned became due and payable by the said *T. M.* and *M.* to the said *W.* And whereas the said *T. R.* in his life-time, to wit, on the said sixteenth day of *May* in the said year of our Lord one thousand seven hundred and thirty-nine, at *London* aforesaid, in the parish and ward aforesaid, in consideration that the said *W.* at the special instance and request of the said *T. R.* had then and there agreed that another sum of twenty-one pounds should be deposited in the hands of the said *T. R.* which said sum of twenty-one pounds last mentioned was so deposited in the hands of the said *T. R.* took upon himself, and then and there faithfully promised the said *W. S.* to pay him the last mentioned sum of money at the end and expiration of two years next after the said sixteenth day of *May* in the year last mentioned, in case one *R S.* who was bound apprentice to the said *W. S.* on the day and year last mentioned for the term of two years then
next

next following, did not die before he had served one year of his apprenticeship; and the said *W. S.* doth aver, that the said *R. S.* did not die before he had served one year of his apprenticeship, but is yet alive, to wit, at *London* aforesaid in the parish and ward aforesaid; and that the said *T. R.* died before the end and expiration of the said two years next after the said sixteenth day of *May* in the year last mentioned, to wit, at *London* aforesaid, in the parish and ward aforesaid, whereby the said sum of money last mentioned, at the end and expiration of the said two years which happened after the intermarriage of the said *T. M.* and *M.* became due and payable by the said *T. M.* and *M.* to the said *W. S.* *Nevertheless* the said *T. M.* and *M.* not regard- *Breach.* ing the said several promises and undertakings of the said *T. R.* made as aforesaid, but contriving and fraudulently intending to deceive and defraud the said *W. S.* in this behalf, have not, nor hath either of them paid the said several sums of money, or any part thereof, to the said *W. S.* (although the said *T. M.* and *M.* on the said twenty-eighth day of *May* in the said year of our Lord one thousand seven hundred and forty-one, and often after, at *London* aforesaid in the parish and ward aforesaid, were requested by the said *W.* so to do) but have hitherto already refused and still do refuse to pay him the same: Wherefore he saith that he is damnified to the value of forty pounds: And therefore he brings suit, &c.

And

*Imparlane.**Special non
assumpfit.**Issue.
Venire
awarded.*

And now at this day, that is to say, Friday next after three weeks from the day of St. Michael in this same term, until which day the said T. M. and M. had leave to imparle to the said bill, and then to answer the same as they should be advised, before our lord the king at Westminster come as well the said W. by his said attorney, as the said T. M. and M. by C. B. their attorney: And the said T. M. and M. defend the wrong and injury, when and so forth; and the said T. and M. protesting that the declaration aforesaid, and the matter therein contained, are not sufficient in law for the said W. S. to have or maintain his aforesaid action against them; for plea nevertheless they say, that the said T. R. in his life-time did not take upon himself and promise in manner and form as the said W. S. above complains against the said T. M. and M. and of this they put themselves upon the country; And the said W. doth the like: Therefore let the jurors come before our lord the king at Westminster, on next after and who are in no wise related to the said W. or the said T. M. and M. to make a certain jury of the country between the said parties of the plea aforesaid, to take cognizance on their oath of the whole truth of the premises, because as well the said T. M. and M. as the said W. between whom thereupon the matter in variance is, have put themselves*

* No such return. See Vol. 1 p.

themselves upon that jury. The same day is given to the said parties at the same place, &c.

London, L. A. complains of T. L. being in *Indorsee of a*
to wit, *L. the custody of the marshal of the* *promissory note*
Marshalsea of our lord the king, before the *against the*
king himself, for that whereas the said T. after *drawer.*
 the first day of *May* in the year of our Lord one thousand seven hundred and five, to wit, on the thirtieth day of *July* in the year of our Lord one thousand seven hundred and thirty-three, at *London* aforesaid, to wit, in the parish of *St. Mary le Bow* in the ward of *Cbeap*, made a certain note in writing with his own hand subscribed thereto, bearing date the same day and year last mentioned, and then and there delivered the said note to one *J. W.* by which said note the aforesaid *T.* promised to pay the said *J. W.* by the name of *Mr. J. W.* or his order, the sum of *fifty pounds for value received*; and the said *J. W.* afterwards, and before the payment of the said fifty pounds, or any part thereof, to wit, the thirtieth day of *August* in the year last mentioned, at *London* aforesaid in the parish and ward aforesaid, by a certain indorsement in writing then and there made on the said note, and then and there subscribed with the proper hand of the said *J. W.* assigned the aforesaid note to the said *L. A.* and by the said indorsement ordered and appointed the aforesaid *T. L.* to pay to the said *L. A.* the said sum of fifty pounds in the aforesaid note specified,

Case.

specified according to the form and effect of the same note, whereof the said *T. L.* afterwards, to wit, the day and year last above-said, at *London* aforesaid in the parish and ward aforesaid, had notice; by reason whereof, and also by force of the statute in that case made and provided, the said *T. L.* became chargeable and liable to pay to the aforesaid *L. A.* the same sum of fifty pounds mentioned in the aforesaid note, according to the form and effect of the said note and indorsement; and the said *T. L.* being so chargeable, in consideration thereof, afterwards, to wit, the day and year last above-said, at *London* aforesaid in the parish and ward aforesaid undertook, and to the said *L. A.* then and there faithfully promised, that he the said *T. L.* would well and faithfully pay and content to the said *L. A.* the aforesaid sum of fifty pounds in the said note mentioned, according to the tenor and effect of the said note and indorsement: *Nevertheless, ut antea, fol.*

Breach.

Pledges, &c.

{ *John Doe,*
and
{ *Richard Roe.*

Of

Of the term of the Holy Trinity in the tenth and eleventh years of the reign of king George the second.

Roll.

Ventris.

Berkshire, **B**E it remembered, that on Friday Memorandum
to wit, next after the morrow of the *of the same*
 Holy Trinity in that same term before our *term.*
 lord the king at *Westminster* comes Sir J. R.
 knt. by J. S. his attorney, and brings here
 in the court of our said lord the king his cer-
 tain bill against R. W. esq; of a plea of tref-
 pass on the case; and there are pledges of
 prosecuting, to wit, *John Doe and Richard*
Roe; which said bill follows in these words, *Declaration on*
 to wit, *Berkshire,* Sir J. R. knt. complains *several issues*
 of R. W. esq; in the custody of the marshal *out of Chan-*
 of the *Marshalsea* of our sovereign lord the *cery.*
 king, before the king himself, for that *where-* 1. *Whether*
as on the tenth day of *December* in the year *the plaintiff*
 of our lord one thousand seven hundred and *was intitled*
 thirty-six, at the parish of *Tbacham* in the *to a manor*
 county of *Berks*, a certain discourse was had *called the*
 between the said Sir J. R. and the said R. *manor of H.*
 whether the said Sir J. R. was then intitled
 to a manor called the manor of *Henwick* in
 the parish of *Tbacham* in the county of *Berks*,
 or not; and upon that discourse the said Sir
 J. did then and there affirm, that he the said
 Sir J. was then intitled to a manor called the
 manor of *Henwick* in the parish of *Tbacham*
 in the county of *Berks*, which said affirmation

VOL. II.

K

of

2. Whether
the plaintiff
was intitled to
certain par-
cels of land,
or to any and
what part of
them.

of the said Sir J. the said R. did then and there deny : And thereupon the said R. afterwards, to wit, on the day and year aforesaid, at the parish of *Tbacham* aforesaid, in consideration that the said Sir J. at the special instance and request of the said R. had paid into the hands of the said R. five pounds of lawful money of *Great Britain*, took upon himself, and then and there faithfully promised the said Sir J. to pay to the said Sir J. the sum of ten pounds of like lawful money, if the said Sir J. was then intitled to a manor, called the manor of *Henwick* in the said parish of *Tbacham* in the county of *Berks* : And the said Sir J. doth aver, that he the said Sir J. was then intitled to a manor called the manor of *Henwick* in the said parish of *Tbacham* in the county of *Berks*, to wit, at the parish aforesaid : And whereas afterwards, to wit, on the same day and year, at the parish aforesaid, another discourse was had between the said Sir J. R. and the said R. of and concerning certain lands called *Ham-Hill*, *Mill-pond Bank*, *Henwick Bowling-Green*, *Ashmole-Green*, and *Day's*, otherwise called *Woodage's Lane* in the parish aforesaid, and whether the said Sir J. R. was intitled to the said lands, or to any of them, or to any part thereof, or not : Upon which said last mentioned discourse the said Sir J. did then and there affirm, that he the said Sir J. was then intitled to all the said lands called *Ham-Mill*, *Mill-pond Bank*, *Henwick Bowling-Green*, *Ashmole-Green*, and *Day's*, otherwise called *Woodage's*

age's Lane, which the said *R.* did then and there deny: And thereupon the said *R.* afterwards, to wit, on the same day and year, at the parish aforesaid, in consideration that the said Sir *J.* at the special instance and request of the said *R.* had paid into the hands of the said *R.* ten pounds of like lawful money of *Great Britain*, took upon himself, and then and there faithfully promised the said Sir *J.* to pay to the said Sir *J.* the sum of forty shillings of like lawful money, if the said Sir *J.* was then intitled to the said land called *Ham-Mill, Mill-pond Bank*, but if the said Sir *J.* was then intitled only to part of the said last mentioned land, then to pay to the said Sir *J.* five shillings for every acre, and so in proportion for any less quantity than an acre thereof, to which the said Sir *J.* was then so intitled, and the sum of forty shillings of like lawful money, if the said Sir *J.* was then intitled to the said land called *Henwick Bowling-Green*; but if the said Sir *J.* was then intitled only to part of the said last mentioned land, then to pay to the said Sir *J.* six shillings for every acre, and so in proportion for any less quantity than an acre thereof, to which the said Sir *J.* was then so intitled; and the sum of forty shillings of like lawful money, if the said Sir *J.* was then intitled to the said land called *Ashmole Green*; but if the said Sir *J.* was then intitled only to part of the said last mentioned land, then to pay to the said Sir *J.* seven shillings for every acre, and so in proportion for any less quantity

than an acre thereof, to which the said Sir J. was then so intitled; and also the sum of forty shillings of like lawful money, if the said Sir J. was then intitled to the said land called *Day's*, otherwise called *Woodage's Lane*; but if the said Sir J. was then intitled only to part of the last mentioned land, then to pay to the said Sir J. eight shillings for every acre, and so in proportion for any less quantity than an acre thereof, to which the said Sir J. was then so intitled; and the said Sir J. doth aver, that he the said Sir J. was then intitled to the lands called *Ham-Mill*, *Mill-pond bank*, containing one acre; and to the said land called *Henwick Bowling-Green*, containing three acres; and to the said land called *Ashmole-Green*, containing fifteen acres; and to the said land called *Day's*, otherwise called *Woodage's Lane*, containing one acre; whereby the sum of eight pounds for the said several parcels of land, and six pounds sixteen shillings for the said several acres, became due and payable by the said R. to the said Sir J. to wit, at the parish aforesaid: *And whereas* afterwards, to wit, on the same day and year, at the parish aforesaid, another discourse was had between the said Sir J. and the said R. of and concerning the said lands called *Ham-Mill*, *Mill-pond Bank*, *Henwick Bowling-Green*, *Ashmole-Green*, and *Day's*, otherwise called *Woodage's Land*, and whether the said lands, or any of them, or any part thereof, was then part of the waste, or held of the manor of *Thacham* or not: And

3. *Whether the said lands were part of the waste of or held of the manor of T.*

And thereupon the said *R.* afterward, to wit, on the same day and year, at the parish afore-said, in consideration that the said Sir *J.* at the special instance and request of the said *R.* had paid into the hands of the said *R.* five pounds of like lawful money, took upon himself, and then and there faithfully promised, that he the said *R.* would pay to the said Sir *J.* the sum of one shilling of like lawful money, if the said land called *Ham-Mill, Mill-pond Bank*, was not part of the waste of the said manor of *Tbacham*, and the sum of two shillings if the said land was not held of the same manor, and the sum of one penny for every acre of the said land called *Ham-Mill, Mill-pond Bank*, and so in proportion for any less quantity than an acre thereof which is not part of the waste, or held of the manor of *Tbacham*; and the sum of three shillings of like lawful money, if the land called *Henwick Bowling-Green* was not part of the waste of the said manor of *Tbacham*; and the sum of four shillings if the same land was not held of the same manor; and the sum of two-pence for every acre of the said land called *Henwick Bowling-Green*, and so in proportion for any less quantity than an acre thereof which is not part of the waste or held of the said manor of *Tbacham*; and the sum of five shillings of like lawful money, if the said land called *Ashmole-Green* was not part of the waste of the said manor of *Tbacham*; and the sum of six shillings, if the same land was not held of the same manor; and the sum of three

pence for every acre of the said land called *Ashmole-Green*, and so in proportion for any less quantity than an acre thereof which is not part of the waste or held of the manor of *Thacham*; and the sum of seven shillings of like lawful money, if the land called *Day's*, otherwise called *Woodage's Lane*, was not part of the waste of the said manor of *Thacham*, and the sum of eight shillings, if the land was not held of the same manor; and the sum of four-pence for every acre of the said land called *Day's*, otherwise *Woodage's Lane*, and so in proportion for any less quantity than an acre which is not part of the waste, or held of the said manor; and the said Sir J. doth aver, that the said lands called *Ham-Mill*, *Mill-pond Bank*, *Henwick Bowling-Green*, *Ashmole-Green*, and *Day's*, otherwise called *Woodage's Lane*, or any of them, or any part thereof, was not part of the waste or held of the said manor of *Thacham*; whereby the sum of thirty-six shillings for the said several parcels of land, and the sum of four shillings and eight pence for the said several acres, became due and payable by the said R. to the said Sir J. *Nevertheless* the said R. not regarding his said several promises and undertakings made as aforesaid, but contriving and fraudulently intending to deceive the said Sir J. hath not yet paid to him the said several sums of money, or any part thereof, (although the said R. afterwards, to wit, on the same day and year, and often after, at the parish aforesaid was requested by the said Sir J. so to do) but hath hitherto

hitherto altogether refused, and still doth refuse to pay him the same: Wherefore he saith, that he is damnified to the value of one hundred pounds; and therefore he brings suit, &c.

And the said R. by A. S. his attorney, comes *Plea to the* and defends the force and injury, when, &c. *first promise.*

And saith it is true he did undertake and promise in manner and form as the said Sir J. above complains against him; but as to the first promise and undertaking in the said declaration above mentioned, the said R. saith, that the said Sir J. ought not to have or maintain his said action therefore against him, because he saith, that the said Sir J. was not intitled to a manor called the manor of *Henwick* in the parish of *Tbacham* in the county of *Berks*, as the said Sir J. above declares: And of this he puts himself upon the country; and the said Sir J. likewise: And as to the *To the second.* second promise and undertaking in the said declaration above mentioned, the said R. saith, that the said Sir J. ought not to have or maintain his said action therefore against him; because he saith that the said Sir J. was not intitled to the said lands called *Ham-Mill*, *Mill-pond Bank*, *Henwick-Bowling Green*, *Ashmole-Green*, and *Day's*, otherwise called *Woodage's Lane*, or to any of them, or to any part thereof, as the said Sir J. above declares: And of this he puts himself upon the country; and the same Sir J. likewise: And as to the *To the last.* last promise and undertaking in the said declaration above contained, the said R. saith,

Venire to try
the several
issues.

that the said Sir J. ought not to have or maintain his said action therefore against him, because he saith, that all the said lands called *Ham-Mill, Mill-pond Bank, Henwick Bowling-Green, Ashmole-Green, and Day's*, otherwise called *Woodage's Lane*, are part of the waste, or held of the said manor of *Tbacham*: And of this he puts himself upon the country; and the said Sir J. likewise, &c. Therefore as well to try the aforesaid issue, as the several other issues above joined between the said parties, let the jury come before our lord the king at *Westminster*, on *Wednesday* next after three weeks of the Holy *Trinity*, and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the aforesaid parties, &c.

Declaration by
an indorsee
against the
drawer of
an inland bill
of exchange.
Lill. Ent. 44.

London, *N. K.* complains of *E. P.* in the currency of the marshal of the *Marshalsea* of our lord the king, before the king himself, for that, to wit, That *whereas* the said *N.* and *E.* and one *J. P.* and *M. R.* now are, and at the time of making the bill hereafter mentioned, and long before, and ever since, were persons residing and trading within this kingdom, to wit, at *London* aforesaid, in the parish of *St. Mary le Bow* in the ward of *Cheap*, and so residing and trading, the said *E.* on the sixteenth day of *May* in the year of our Lord one thousand seven hundred and seventeen, at *London* aforesaid in the parish and ward aforesaid, according to the usage and custom of merchants, from the time
to

to the contrary whereof the memory of man is not, there used and approved, made his certain bill of *Exchange* in writing, his proper hand being thereunto subscribed, bearing date the same day and year, and then and there directed the said bill to the aforesaid *J. P.* by which bill the said *E.* requested the said *J.* thirty days after the date thereof, to pay to the said *N. K.* or his order, forty pounds of lawful money of this kingdom, for value received, as by advice from the said *E.* And Plaintiff indorses the bill. the said sum of money being unpaid to the said *N.* the said *N.* afterwards, to wit, on the same day and year at *London* aforesaid in the parish and ward aforesaid, according to the aforesaid usage and custom of merchants, indorsed the said bill, his proper hand being thereunto subscribed, and by the said indorsement the said *N.* appointed the contents of the said bill to be paid to the said *M. R.* or his order; And the said *J.* afterwards, to Bill accepted. wit, on the same day and year at *London* aforesaid, in the parish and ward aforesaid, according to the said usage and custom of merchants, had sight of the said bill so indorsed, and accepted the said bill to be paid according to the tenor of the said bill and indorsement; But the said *J.* did not pay the Not paid. the said *M.* the said forty pounds, although the said *J.* afterwards, to wit, on the first day of *July* in the year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, was requested by the said *M.* to pay the same: And afterwards, to wit, on the said first day of *July* Indorsed back to plaintiff. in

*Bill not paid**Assumpsit.**Breach.*

in the year of our Lord aforesaid, at *London* aforesaid, in the parish and ward aforesaid, the said sum of money being unpaid to the said *M.* he the said *M.* according to the said usage and custom of merchants, indorsed the said bill, his own proper hand being thereunto subscribed, and by the said indorsement the said *M.* appointed the contents of the said bill to be paid to the said *N.* or his order; *And* the said *N.* afterwards, to wit, on the said first day of *July* in the year of our Lord aforesaid, at *London* aforesaid in the parish and ward aforesaid, requested the said *J.* to pay to him the said *N.* the said sum of money, according to the tenor of the said bill and indorsements, which the said *J.* then and there intirely refused to do; and the said *J.* never paid the said forty pounds to the said *N.* of which the said *E.* on the day and year last mentioned, at *London* aforesaid in the parish and ward aforesaid, had notice; by reason of which said premisses, and also by force of the said usage and custom of merchants, the said *E.* according to the said usage and custom of merchants, then and there became liable, to pay to the said *N.* the said sum of money, according to the form and effect of the said bill and indorsements; *And* being so liable the said *E.* afterwards, to wit, on the said first day of *July* in the year aforesaid, in the parish and ward aforesaid, undertook and then and there faithfully promised the said *N.* to pay him the said sum of money, according to the form and effect of the said bill and indorsements: *Yet* the said *E.* no ways, &c.

Easter

Easter term in the twenty-ninth year of
the reign of king George the second.

London, *W. N.* complaineth of *A. S.* being *Declaration on*
to wit, *W.* in the custody of the marshal *an inland bill*
of the *Marshalsea* of our sovereign lord the *of exchange,*
king, before the king himself, of a plea, for *drawn by one*
that whereas at the several times hereafter *for himself and*
mentioned, *T. F.* the elder, and *T. F.* the *partner,*
younger, were partners and joint dealers to- *brought by the*
gether; and the said *W. N.* and *A. J.* were *payee against*
persons residing, trading and using commerce *the acceptor.*
within this kingdom, to wit, at London
aforesaid, in the parish of St. Mary le Bow,
in the ward of Cheap; and being so respective-
ly resident and trading as aforesaid, the said
T. F. the younger, for himself, and the said
T. F. the elder, his said partner, on the third
day of January in the year of our Lord one
thousand seven hundred and fifty-six, to wit,
at London aforesaid, at the parish and ward
aforesaid, made a certain bill of exchange,
subscribed with the proper hand-writing of
the said *T. F.* the younger, according to the
custom of merchants, from time immemo-
rial used and approved of; And the same bill
bearing date the same day and year aforesaid,
then and there directed to the said *A. J.* by
the name and description of Mr. *A. J.* at
Grigby's Coffee-house, London; and by the
said bill the said *T. F.* the younger, for him-
self, and the said *T. F.* the elder, in their
joint

joint name, form and stile, to wit, in the name of *T. F.* and co. required the said *A. J.* one month after date, to pay to the order of the said *W.* by the name and description of Mr. *W. N.* eighty-nine pounds and seventeen shillings, and place it to the account of them the said *T. F.* the elder, and *T. F.* the younger, which said bill of exchange, he the said *A. J.* afterwards, and before the time appointed for the payment of the said sum of money contained in the said bill, or any part thereof, to wit, the tenth day of *January* in the year abovesaid, at *London* abovesaid, in the parish and ward abovesaid, upon sight thereof accepted according to the said custom, and by reason of the premisses, and according to the said custom and by the law of merchants, he the said *A. J.* became liable to pay to the said *W. N.* the said sum of money specified in the said bill according to the tenor and effect of the said bill, and his said acceptance thereof; and being so liable, he the said *A. J.* in consideration thereof afterwards, to wit, on the same day and year last abovesaid, at *London* abovesaid, in the parish and ward abovesaid, undertook, and then and there faithfully promised the said *W. N.* to pay him the said sum of money mentioned in the said bill, according to the tenor and effect of the said bill, and of his said acceptance thereof as abovesaid. *And whereas also* the said *A. J.* afterwards, to wit, on the first day of *March* in the year abovesaid, at *London* abovesaid, in the parish and ward abovesaid, was indebted

Indeb. assum.
for money had
and received.

to the said *W. N.* in one hundred pounds of lawful money of *Great Britain*, for money by the said *A. J.* before that time had and received to the use of the said *W. N.* and being so indebted, he the said *A. J.* in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at *London* aforesaid, in the parish and ward aforesaid, undertook, and then and there faithfully promised the said *W. N.* to pay him the said last mentioned sum of money, when he should be thereto afterwards required: Yet the said *Breach.* *A. J.* not regarding his aforesaid several promises and undertakings, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *W. N.* in this particular, hath not paid the said several sums of money above mentioned, or any part thereof, although to pay the same to the said *W. N.* afterwards, to wit, on the same day and year last aforesaid, and often afterwards, at *London* aforesaid, in the parish and ward aforesaid, was requested by the said *W. N.* but he to pay the same to the said *W. N.* hath hitherto altogether refused, and still refuses, to the said *W. N.* his damage of one hundred and eighty pounds; and therefore he brings his suit, &c.

C ——— for plaintiff.

W ——— for defendant.

Pledges to prosecute { *John Doe,*
and
Richard Roe.
Easter.

Easter term in the eighth year of king
George the first.

Declaration on London. S. R. complains of W. C. in the currency of the marshal of the Marshalsea of our lord the king before the king himself, for that, to wit, That whereas one W. H. on the twenty-second day of April new stile, in the year of our Lord one thousand seven hundred and twenty-one, and long before and after, was a merchant residing and trafficking at Middleburg in parts beyond the seas; and whereas the said W. C. was and still is a merchant residing and trafficking at London aforesaid, to wit, in the parish of St. Mary le Bow, in the ward of Cheap; and whereas the said W. H. afterwards, to wit, on the same day and year aforesaid, at Middleburg aforesaid, according to the usage and custom of merchants, made a bill of exchange in writing, bearing date the same day and year aforesaid, and the said bill of exchange then and there subscribed with his own proper hand by the name of W. H. and directed the said bill to the said W. C. merchant at London aforesaid, and by the said bill the said W. H. requested the said W. C. in six weeks after the date of the said bill, to pay to the order of Mr. J. B. sixty pounds sterling for value received, as by advice from the said W. H. And also whereas the said J. B. afterwards, to wit, on the tenth day of May in the

second indorsee
against the acceptor of the bill.
Lill. Ent. 55,
90.

Indorsed.

the year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, by his indorsement, his proper hand being thereunto subscribed, appointed the contents of the said bill to be paid to one *J. C.* or order, value received; *And also whereas* the said *J. C.* afterwards, to *Indorsed again to plaintiff.* wit, on the said tenth day of *May* in the year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, by his indorsement, his proper hand being thereunto subscribed, appointed the contents of the said bill to be paid to the said *S. R.* *And also whereas* the *Defendant accepted the bill.* said *W. C.* to whom the said bill of exchange was so as aforesaid directed, afterwards, to wit, on the same day and year last above mentioned, at *London* aforesaid, in the parish and ward aforesaid, according to the said usage and custom of merchants, accepted the said bill to pay the said sixty pounds sterling, in the said bill mentioned, to the said *S. R.* according to the tenor and effect of the said bill, whereof the said *W. C.* afterwards, to wit, on the same day and year at *London* aforesaid, in the parish and ward aforesaid, had notice; by reason of which said premisses, and according to the said usage and custom of merchants, the said *W. C.* became and now is liable to pay to the said *S. R.* the said sixty pounds sterling in the said bill contained*, according to the tenor and

* Bill of exchange presented to and accepted by the drawee after the time it was made payable; on an action against him the plaintiff declared, that the defendant
assumpsit

Assumpsit.

and effect of the said bill and the indorsements thereon made as aforesaid; And the said *W. C.* being so liable, afterwards, to wit, on the same day and year last above mentioned, at *London* aforesaid, in the parish and ward aforesaid, in consideration thereof undertook, and then and there faithfully promised the said *S.* to pay him the said sum of money in the said bill contained, according to the tenor and effect of the said bill: Yet the said *W. C.* no ways, &c. *Vide postea.*

Breach.

Easter term in the tenth year of king
George the second.

Memorandum
of a precedent
term.

London, **B**E it remembered, That in the term to wit, of *St. Hilary* last past, before our lord the king at *Westminster*, came *W. D.* by *G. J.* his attorney, and brought in the court of our said lord the king then there his certain bill

assumpsit to pay the money *secundum tenorem & effectum billæ præd.* Issue, and verdict *pro quer.* Moved in arrest of judgment, that it was impossible the defendant could pay the money *secundum tenorem billæ*, because the bill was not presented or accepted till about a year after the day on which the money was payable by the tenor.

Sed per cur.: The acceptance, though after the day the money was payable, is binding, and as for the words *secundum tenorem & effectum billæ*, the effect of the bill is the payment of the money, and not the day of payment, or at most this is but surplusage. *Judic. pro quer. Carth. 459.*

bill against *E. P.* being in the custody of the marshal of the *Marshalsea* of our lord the king, before the king himself, of a plea of trespass upon the case; and there are pledges of prosecuting, namely, *John Doe* and *Richard Roe*; which said bill followeth in these words, to wit, *London*, to wit, *W. D.* complains of *E. P.* being in the custody of the marshal of the *Marshalsea* of our lord the king, before the king himself, for this, to wit, That whereas the said *E. P.* and one *J. T.* now deceased, on the ninth day of *May* in the year of our Lord one thousand seven hundred and thirty-five, being merchants at *Sereleon* in parts beyond the seas, to wit, at *London* aforesaid, in the parish of *St. Mary le Bow* in the ward of *Cheap*, by their bill of exchange in writing, subscribed with their proper hands, and directed to the committee of the *Gamboa* company, required and appointed the said committee to pay to the said *W.* or his order, on sight of the said bill, their second or third bill of the same time or date with the said bill not being paid, the sum of sixty-five pounds and four shillings, being for the like value there received: And also whereas afterwards, to wit, on the first day of *September* in the year last aforesaid, at *London* aforesaid, in the parish and ward aforesaid, the said bill of exchange was shewed to the said committee of the *Gamboa* company, and the said committee then and there was requested to accept the said bill according to the usage of merchants, and to make payment of

Declaration on a foreign bill of exchange by the drawer against the surviving drawer.

Lutw. 946, 950.

Bill tendered.

Not accepted.

Assumpsit.

Breach.

*Indeb. ass for
money had and
received on a
joint promise
against the
survivor.*

the said sixty-five pounds and four shillings to the said *W.* according to the form and effect of the said bill: *And also whereas* the said committee then and there refused to accept the said bill, and to pay the said sixty-five pounds and four shillings, the said second and their bill, or either of them, being then and there not accepted nor paid; by reason of which said premisses, according to the usage between merchants, from the time to the contrary whereof the memory of man is not, used and approved, to wit, at *London* aforesaid, in the parish and ward aforesaid, the said *E.* and *J.* ought to have paid the said sixty-five pounds and four shillings to the said *W.* the said *E.* and *J.* in consideration of the premisses, then and there undertook, and to the said *W.* then and there faithfully promised to pay to the said *W.* the said sixty-five pounds and four shillings, when they should be thereunto afterwards required: *Yet* the said *E.* and *J.* in the life-time of the said *J.* have not, nor has the said *E.* since the death of the said *J.* paid the said sixty-five pounds and four shillings to the said *W.* although often required, &c. but the said *E.* and *J.* in the life-time of the said *J.* and the said *E.* after the death of the said *J.* refused to pay the same to the said *W.* and the said *E.* still refuses to pay him the same: *And also whereas* the said *E.* and *J. T.* in the life-time of the said *J.* to wit, on the said ninth day of *May* in the said year of our lord one thousand seven hundred and thirty-five, at *London* aforesaid, in the parish and ward aforesaid,

aforesaid were indebted to the said *W.* in other sixty-five pounds and four shillings of lawful money of *Great Britain*, for so much money by the said *E.* and *J.* in the life-time of the said *J.* before that time had and received to the use of the said *W.* and the said *E.* and *J.* in consideration thereof, then and there undertook, and then and there faithfully promised the said *W.* that they the said *E.* and *J.* would well and truly pay the said sixty-five pounds and four shillings to the said *W.* when they should be thereunto afterwards required: Yet the said *E.* and *J.* in the life-time of the said *J.* not regarding their several promises and undertakings made in form aforesaid, but contriving and fraudulently intending in this behalf craftily and subtilly to deceive and defraud the said *W.* of the said several sums of money, the said *E.* and *J.* or either of them in the life-time of the said *J.* or the said *E.* after the death of the said *J.* have not, nor has either of them, paid the said sixty-five pounds and four shillings or any part thereof, to the said *W.* although often requested, &c. but the said *E.* and *J.* in the life-time of the said *J.* and the said *E.* after the death of the said *J.* intirely refused to pay the said sixty-five pounds and four shillings to the said *W.* and the said *E.* still refuses to pay him the same, to the damage of the said *W.* of two hundred pounds: And thereupon he brings suit, &c. *With this, that* *Averment.* the said *W. D.* will verify, that at the time of making the said bill, and long before and

after, there was at *London*, to wit, at the parish and ward aforesaid, a certain company of merchants called and known by the name of the committee of *Gambua* company, to which said company, by the aforesaid name, bills of exchange have, during the whole time aforesaid, been used to be directed according to the usage and practice amongst merchants.

Imparlance.

And now at this day, to wit, *Wednesday* next after fifteen days of *Easter* in this same term, to which day the said *E. P.* had leave to imparle to the said bill, and then to answer, &c. before our lord the king at *Westminster*, came as well the said *W. D.* as the said *E. P.* and *D. S.* his attorney; and the said *E.* defends the force and injury, when, &c.

*Demurrer to
the first count.*

And as to the first promise and undertaking in the said declaration of the said *W.* above-mentioned, he the said *E.* prays judgment of the said declaration, because he says, that the said declaration, and the matter therein contained, is not sufficient in law to maintain the action of the said *W.* thereupon against the said *E.* to which said declaration, as to the said first promise and undertaking contained in the said declaration of the said *W.* the said *E.* need not, nor is he bound by the law of the land in any manner to answer; and this he is ready to verify: Therefore for want of a sufficient declaration in this behalf as to the said first promise and undertaking in the declaration of the said *W.* above-mentioned, the said *E.* prays judgment, and that the said *W.* may be barred from having his action against

against the said *E.* thereupon as to the first promise and undertaking in the said declaration of the said *W.* above-mentioned: *And* Non assump. as to the second promise in the declaration of the said *W.* above also mentioned, the said *E.* says, that he did not undertake in manner and form as the said *W.* hath above declared against him; and of this he puts himself upon the country; and the said *W.* does so likewise, &c. *And* the said *W.* says, that he by any thing by the said *E.* above in pleading alledged, as to the first promise and undertaking in the said declaration above-mentioned, ought not to be barred from having his action thereupon against the said *E.* because he says, that the said declaration, and the matter therein contained as to the said first promise and undertaking, are good and sufficient in law to maintain the said action of the said *W.* thereupon against the said *E.* which said declaration, and the matter therein contained, the said *W.* is ready to verify and prove as the court, &c. *And* because the said *E.* does not answer the said declaration, nor has hitherto at all denied the same, the said *W.* as before, prays judgment and his damages by occasion of the premisses to be adjudged to him, &c. *But* because the court of our said lord the king now here are not advised of giving their judgment of and upon the premisses, whereon the said parties have put themselves upon the judgment of the court, a day is thereupon given to the said parties before our lord the king at Westminster.

*to the rest.**Issue thereon.**Joinder in demurrer.**Continuance.*

Award of venire facias tam ad triandum quam ad inquirendum.

Nolle prosequi as to the second count.
1 Plowd. 4.
20.
Pract. Reg.
218, 220.

Continuance.

*ster until Friday next after the morrow of the Holy Trinity, to hear their judgment of and upon the said premisses, for that the court of our said lord the king now here is not yet advised, &c. And as well to try the said issue between the said parties above joined to be tried by the country, as to inquire what damages the said W. has sustained by occasion of the said premisses, whereupon the said parties have put themselves upon the judgment of the court, if judgment shall thereupon be given for the said W. against the said E. Let a jury come thereupon before our lord the king at Westminster, at the aforesaid day; and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c. At which day before our lord the king at Westminster came as well the said W. as the said E. by their attorneys aforesaid; and the said W. acknowledged here in court, that he would not further prosecute against the said E. as to the second promise and undertaking in his said bill above-mentioned: And as to the said first promise and undertaking in the said declaration above-mentioned, whereupon the said parties have put themselves upon the judgment of the court, because the court of our said lord the king here are not yet advised of giving their judgment of and upon the premisses, a day is thereupon given to the said parties before our lord the king at Westminster until * Thursday next after three weeks of St.*

* No such return now. See Vol. 1. p.

St. Michael, to hear their judgment thereupon, for that the court of our said lord the king now here is not yet advised, &c. *At which day* before our lord the king at *Westminster* came the said parties by their attornies aforesaid: Whereupon the premisses as to the said first promise and undertaking in the said declaration above-mentioned, whereupon the said parties have put themselves upon the judgment of the court, being seen, and by the court of our said lord the king now here fully understood; for that it seems to the court of our said lord the king now here, that the said declaration, and the matter therein contained as to the said first promise and undertaking, are good and sufficient in law to maintain the action of the said *W.* thereupon against the said *E.* It is considered that the said *W.* ought to receive his damages against the said *E.* *But* because it is unknown to the court of our said lord the king now here what damages the said *W.* has sustained by occasion of the premisses; it is therefore commanded to the sheriffs, that by the oath of twelve good and lawful men of their bailiwick they diligently inquire what damages the said *W.* has sustained, as well by occasion of not performing the said first promise and undertaking, as for his costs and charges by him about his suit in this behalf expended; and that they send the inquisition, which, &c. to our lord the king at *Westminster* on *Friday* next after the octave of *St. Hilary*, under their seals, and the seals, &c. together

The return.

gether with the writ of our said lord the king to them thereupon directed: The same day is given to the said *W.* there, &c. At which day before our lord the king at *Westminster* came the said *W. D.* by his attorney aforesaid; and the sheriffs of *London*, to wit, and by virtue of the writ of our said lord the king to them thereupon directed, return a certain inquisition taken before them at the *Guildhall* of the city of *London*, situate in the parish of *St. Lawrence* in the *Old Jewry* in the ward of *Cheap* of the same city, on the twenty-second day of *January* in the year of the reign of our sovereign lord *George* the second, now king of *Great Britain*, &c. by the oath of twelve good, &c. By which it appears that the said *W. D.* has sustained damages by occasion of the said premises over and above his costs and charges by him about his suit in this behalf expended, to eighty and nine pounds, and for these costs and charges to twenty-six shillings and eight-pence: It is therefore considered, that the said *W. D.* do recover against the said *E. P.* his said damages found by the said inquisition in form aforesaid, and also nine pounds thirteen shillings and eight-pence, adjudged by the court of our said lord the king now here to the said *W.* by his assent, of increase, for his costs and charges, which said damages amount in the whole to one hundred pounds; and the said *E.* in mercy, &c.

*Judgment
thereon.*

Judgment affirmed on error in the *Exchequer* chamber. *Lill. Ent. 55.*

Trinity

Trinity term in the year of, &c.

London, *W.* K. assignee of the debts, goods ^{Indeb. ass. by} *to wit,* and effects of *T. W.* a bank- ^{assignee of a}
 rupt, according to the form of the several ^{bankrupt's}
 statutes made concerning bankrupts, com- ^{estate for goods}
 plains of *R. W.* in the custody of the mar- ^{fold and deli-}
 shal of the *Marshalsea* of our lord the king, ^{vered by}
 before the king himself, for that, to wit, ^{bankrupt,}
 That *whereas* the said *R.* on the tenth day
 of *April* in the year of the
 reign of our sovereign lord *George* the second,
 now king of *Great Britain*, at *London* afore-
 said, to wit, in the parish of *St. Mary le Bow*
 in the ward of *Cheap*, was indebted to the
 said *W.* as assignee in form afore said in one
 hundred pounds of lawful money of *Great*
Britain, for divers goods, wares and mer-
 chandizes, before that time sold and delivered
 by the said *T. W.* to the said *R. W.* at his
 special instance and request; and being so in-
 debted, the said *R.* in consideration thereof,
 afterwards, to wit, on the same day and year
 at *London* afore said, in the parish and ward
 afore said, undertook, and then and there pro-
 mised the said *W.* as assignee in form afore-
 said, that he the said *R.* when he should be
 thereunto required, would pay the said one
 hundred pounds to the said *W.* as assignee in
 form afore said: And also *whereas* the said *R.* ^{Quant. val.}
 afterwards, to wit, on the said tenth day of ^{thereon.}
April in the year afore said, at
London

London aforesaid, in the parish and ward aforesaid; in consideration that the said *T. W.* had before that time sold and delivered to the said *R. W.* at his like special instance and request, divers other goods, wares and merchandize, undertook, and then and there promised the said *W.* as assignee in form aforesaid, that he the said *R.* when he should be thereunto required, would pay to the said *W.* as assignee in form aforesaid, so much money for the said goods, wares and merchandizes last mentioned, as the said goods, wares and merchandizes were reasonably worth at the time of the sale and delivery thereof; and the said *W.* avers, that the said goods, wares and merchandizes last mentioned, were at the time of the sale and delivery thereof, by the said *T. W.* to the said *R. W.* reasonably worth other one hundred pounds of like lawful money of *Great Britain*, to wit, at *London* aforesaid, in the parish and ward aforesaid, of which the said *R.* then and there had notice; Yet the said *R.* not regarding his said several promises and undertakings made in form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *W.* as assignee in form aforesaid, in this behalf, has not paid the said several sums of money or any part thereof (although often required) to the said *W.* nor any way contented him for the same; but to pay the same hath hitherto refused, and still doth refuse, to the damage of the said *W.* of
twenty

twenty pounds; and thereupon he brings
suit, &c.

Pledges, &c.

*London, J. F. late of Westminster, in the Declaration
to wit, J. county of Middlesex, merchant, against two
was attached to answer J. A. of a plea of tres- partners,
pasts on the case, &c. and whereupon the said where one is
J. A. by his attorney, complains, the other ap-
That whereas the said J. F. together with pears.
D. B. late of Greenwich in the county of Indeb. aff. for
Kent, feltmonger, which said D. B. is in due goods sold and
manner outlawed in the court of our lord delivered.
the king, before the king himself, on the first
day of August in the year of our lord one
thousand seven hundred and thirty-eight, at
London, to wit, in the parish of St. Mary le
Bow in the ward of Cheap, was indebted to
the said J. A. in one hundred and forty pounds
eight shillings and eight-pence of lawful mo-
ney of Great Britain, for divers goods, wares
and merchandizes before that time sold and
delivered by the said J. A. to the said J. F.
and the said D. B. who, &c. at their special
instance and request; and being so indebted
the said J. F. and the aforesaid D. B. who, &c.
in consideration thereof, afterwards, to wit, on
the same day and year at London aforesaid, in
the parish and ward aforesaid, undertook,
and then and there faithfully promised the
said J. A. that they the said J. F. and the said
D. B. who, &c. would well and truly pay the
said one hundred and forty pounds eight shil-
lings*

*Breach of
promise.*

lings and eight pence to the said *J. A.* when they should be thereunto afterwards required; *Nevertheless* the said *J. F.* and *D. B.* who, &c. before the said outlawry was had, contriving and fraudulently intending of the said one hundred and forty pounds eight shillings and eight pence craftily and subtilly to deceive and defraud the said *J. A.* the said one hundred and forty pounds eight shillings and eight pence to the said *J. A.* (although to do the same the said *J. F.* and *D. B.* who, &c. before the said outlawry was had, afterwards, to wit, on the first day of *August* in the said year of our Lord one thousand seven hundred and thirty-eight, and the said *J. F.* often afterwards, at *London* aforesaid, in the parish and ward aforesaid, were required by the said *J. A.*) have not, nor has either of them paid, nor have they nor has either of them any ways contented him for the same, but have hitherto intirely refused to pay the said one hundred and forty pounds eight shillings and eight pence to the said *J. A.* or any ways content him for the same; and the said *J. F.* still refuses to pay him the said sum, to the damage of the said *J. A.* of one hundred and forty pounds; And thereupon he brings suit, &c.

*Assumpsit by
an indorsee a-
gainst the ma-
ster on a pro-
missory note
drawn by and*

To wit, *T. E.* complains of *T. S.* in the custody of the marshal, &c. for that, *That* whereas on the seventeenth day of *March* in the year of our Lord one thousand seven hundred and thirty-seven, and long before, one

R. R.

R. R. was a servant of the said *T. S.* and by the said *T. S.* then and long before usually intrusted to sign promissory notes for the said *T. S.* his master, to wit, at *London* aforesaid, in the parish and ward aforesaid; and the said *R.* being so intrusted as aforesaid, on the same seventeenth day of *March* in the year of our Lord one thousand seven hundred and thirty-seven, at *London* aforesaid, in the parish and ward aforesaid, made for the said *T. S.* a certain note in writing called a promissory note, bearing date the same day and year last-mentioned, the proper hand and name of the said *R.* being subscribed to the said note, and by the said note the said *R.* promised to pay to one *J. P.* or order, *six months after the date* of the said note, eighty pounds, for the said *T. S.* master of the said *R.* and the said *T. E.* further says, that afterwards, and before payment or satisfaction of the said sum of eighty pounds in the said note contained, to wit, on the twenty-fifth day of *March* in the year of our Lord one thousand seven hundred and thirty-eight, at *London* aforesaid, in the parish and ward aforesaid, the said *J.* by indorsement, his proper hand being indorsed on the said note, appointed the contents of the said note to be paid to the said *T. E.* for value received; of which said note so indorsed, and also of the said indorsement, the said *T. S.* afterwards, to wit, on the said twenty-fifth day of *March* in the year of our Lord last above mentioned, at *London* aforesaid, in the parish and ward aforesaid, had

*in the name of
the servant
for value re-
ceived for his
master.*

Note indorsed.

had notice; and by virtue of the said note and indorsement aforesaid, and also by force of the statute in such case lately made and provided, the said *T. S.* then and there became liable to pay the said *T. E.* the said eighty pounds in the note mentioned according to the tenor of the said note; and being so liable the said *T. S.* in consideration thereof, afterwards, to wit, on the same day and year last above mentioned, at *London* aforesaid, in the parish and ward aforesaid, undertook, and then and there faithfully promised the said *T. E.* that he the said *T. S.* would well and faithfully pay to the said *T. E.* the said eighty pounds according to the tenor of the said note and indorsement: *Nevertheless* the said *T. S.* &c.

Pleas before our lord the king at Westminster, of the term of St. Hilary in the fifth year of the reign of our sovereign lord George the second, now king of Great Britain, &c.

Roll. 530.

Memorandum
of the same
term.

2 Barnard.
B. R. 183,
374-

London, **B**E it remembered, that on *Monday* to wit, next after the octave of *St. Hilary* in this same term before our lord the king at *Westminster* came the governor and company of the bank of *England*, by

their

their attorney, and brought here into the said court of our lord the king then there, their bill against *C. M.* widow, executrix of the testament and last will of *H. M.* esq; deceas'd, in the custody of the marshal of the *Marshalsea* of our lord the king, before the king himself, of a plea of trespass on the case; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*; which said bill follows in these words, to wit, *London*, to wit, *Declaration*
The governor and company of the bank of *England* complain of *C. M.* widow, executrix *against an executrix.*
of the testament and last will of *H. M.* esq; deceas'd, in the custody of the marshal, &c.
for that, to wit, *That whereas (the plaintiffs declare on thirty counts sur indeb. assumpsit for various particular sums of money lent, and money had and received to the plaintiffs use alternatim, and then declare as follows.) And also whereas* *31st count, indeb. ass. for money lent testator.*
afterwards, to wit, on the same fifteenth day of *November* in the said year of our Lord 1731. at *London* aforesaid, in the parish and ward aforesaid, he the said *H.* in his life-time was indebted to the said governor and company in 32000*l.* of lawful money of *Great Britain*, for divers sums of money before that time lent by the said governor and company to the said *H.* in his life-time; and being so indebted, the said *H.* in his life-time, in consideration thereof, afterwards, to wit, on the same fifteenth day of *November* in the said year of our Lord 1731. at *London* aforesaid, in the parish and ward aforesaid, undertook, and then and there faithfully promised the said governor

32d count,
indeb. aff. for
money had and
received by the
testator.

governor and company, that he the said *H.* would well and truly pay the said 32000*l.* to the said governor and company, when he should be thereunto afterwards required: *And also* whereas afterwards, to wit, on the same day and year last abovesaid, at *London* aforesaid, in the parish and ward aforesaid, he the said *H.* in his life-time was indebted to the said governor and company in other 32000*l.* of like lawful money of *Great Britain*, for divers sums of money by him the said *H.* in his life-time before that time had and received to the use of the said governor and company; and being so indebted the said *H.* in his life-time, afterwards, to wit, on the same day and year last abovesaid, at *London* aforesaid, in the parish and ward aforesaid, in consideration thereof, undertook, and then and there faithfully promised the said governor and company, that he the said *H.* would well and truly pay the said 32000*l.* last mentioned to the said governor and company, when he should be thereunto afterwards required: *And also*

33d count,
indeb. aff. for
money laid out
for testator.

whereas afterwards, to wit, on the same fifteenth day of *November* in the said year of our Lord 1731. at *London* aforesaid, in the parish and ward aforesaid, he the said *H.* in his life-time was indebted to the said governor and company in other 32000*l.* of like lawful money of *Great Britain*, for money for the said *H.* in his life-time, and at this special instance and request, before that time expended, laid out and paid by the said governor and company; and being so indebted, the said *H.* in

in his life-time afterwards, to wit, on the same day and year last abovesaid at *London* abovesaid, in the parish and ward abovesaid, in consideration thereof, undertook, and then and there faithfully promised the said governor and company, that he the said *H.* would well and truly pay the said 32000*l.* last mentioned, to the said governor and company, when he should be thereunto afterwards required: Yet the said *H.* in his life-time, and the said *Breach.*
C. after the death of the said *H.* no ways regarding the promises and undertakings of the said *H.* in his life-time made in form abovesaid to the said governor and company, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said governor and company, in this behalf, have not paid, nor has either of them paid the said several sums of money, or any part thereof, to the said governor and company, (although the said *H.* in his life-time, and the said *C.* after the death of the said *H.* to wit, on the 10th day of *December* in the said year of our Lord 1731. and often afterwards at *London* abovesaid, in the parish and ward abovesaid, were requested by the said governor and company); but have intirely refused, and the said *C.* still refuses to pay them the same: Whereupon the said governor and company say, that they are injured and have damage to the value of 35000*l.* and thereupon they bring suit, &c.

And the said *C.* by *Plea.*
 her attorney, comes and defends the force and injury, when, &c. and says, That the
 Vol. II. M said

*A bond entered
into by testator.*

*The condition
set forth.*

said governor and company ought not to have their said action against her, because she says *that* the said *H.* in his life-time, to wit, on the sixth day of *March* in the year of our Lord 1727. at *London* aforesaid, in the parish and ward aforesaid, for his* true and just debt, by his certain writing obligatory sealed with his seal, bearing date the same day and year, acknowledged himself to be bound to one Sir *W. M.* baronet, in 53000*l.* of lawful money of *Great Britain*, to be paid to the said Sir *W.* when he should be thereunto afterwards requested, with a condition to the said writing obligatory under written, that if the said *H.* his heirs, executors or administrators should well and truly pay or cause to be paid unto the said Sir *W.* his executors, administrators or assigns, the full sum of 26500*l.* of good and lawful money of *Great Britain*, with interest for the said sum after the rate of five pounds for a hundred pounds for a year, at and upon the several days and times and in manner and form following, that is to say, the sum of 5000*l.* part of the said sum of 26500*l.* upon the twenty-fourth day of *June* which should be in the year of our Lord 1728. together with all interest then due for the said whole sum of 26500*l.* and the sum of 5000*l.* other part of the said sum of 26500*l.* with

* Plea held to be good without averment, that it was *pro vero et justo debito*; for it shall be intended that the bond was given for a just debt. *Trin. 3 Jac. 2. B. R. Lake v. Raw, Carth. 8.*

with the interest for the same 5000*l.* upon the twenty-fourth day of *June* which should be in the year of our lord 1729. together with the interest then likewise due for the sum of 16500*l.* the remainder of the said sum of 26500*l.* then behind and unpaid, and the sum of 5000*l.* more thereof with the interest for the same sum upon the twenty-fourth day of *June* which should be in the year of our Lord 1730. together also with the interest then likewise due for the sum of 15500*l.* the remainder of the said sum of 26500*l.* then behind and unpaid, and the further sum of 5000*l.* more thereof with the interest for the same, upon the twenty-fourth day of *June* which should be in the year of our Lord 1731. together also with the interest then likewise due for the sum of 6500*l.* the remainder of the said sum of 26500*l.* then behind and unpaid, and the like sum of 5000*l.* more thereof with the interest for the same upon the twenty-fourth day of *June* which should be in the year of our Lord 1732. together also with the interest then likewise due for the sum of 1500*l.* the remainder of the said sum of 26500*l.* then behind and unpaid, and the sum of 1500*l.* being the residue and remainder of the said sum of 26500*l.* upon the twenty-fourth day of *June* which should be in the year of our Lord 1733. together with the interest then due for the said sum of 1500*l.* without fraud or further delay ; then the said obligation to be void and of no effect ; but if default should happen to be made in payment of any or either of the said several and re-

spective sums of money above mentioned, or of any part of any or either of them, or of any of the said interest, on any or either of the said several and respective days or times above limited or appointed for the payment thereof, contrary to the true intent and meaning of the said condition, then the said obligation to be and remain in full force and virtue; provided nevertheless, and the said obligation was upon this further condition, that it should be lawful for the said *H. M.* his heirs, executors or administrators, to pay, satisfy and discharge the said sum of 26500 *l.* and interest or any part or parts thereof, in any shorter time or times than were in the said condition before limited and appointed for the payment thereof, in payments of not less than 5000 *l.* at a time (except the last payment thereof) he the said *H. M.* his heirs, executors or administrators, first giving six months notice in writing under his or their hand or hands unto the said *Sir W. M.* his executors, administrators or assigns, of such his or their intention so to do, at his the said *Sir W. M.*'s then last place of abode, or if the said *Sir W. M.* should be then dead, to his executors or administrators*: And the said *C.* further says, that the said 5000 *l.* in the said condition above mentioned to be payable

Defendant sets forth what is really due on the bond.

* The best way for an administrator is to plead honestly, and if there be a judgment for a penalty, in pleading thereof he ought to shew how much is due thereon. *Salk.* 312.

able upon the twenty-fourth of *June* in the year of our Lord 1732. and the said 1500*l.* in the said condition above mentioned to be payable upon the twenty-fourth day of *June* in the year of our Lord 1733. together with the whole interest for the said several sums of 5000*l.* and 1500*l.* last mentioned due and payable from the twenty-fourth day of *June* in the year of our Lord 1731. are still unpaid, and the said writing obligatory still remains in its full force and effect, no ways annulled, cancelled or satisfied; [*the defendant pleads another bond entered into by the testator as security for a third person, and goes on*] And ^{Pleads another bond.} the said C. further says, that the said H. afterwards in his life-time, to wit, on the twenty-seventh day of *July* in the fourth year of the reign of his present majesty, at *London* aforesaid, in the parish and ward aforesaid, for another true and just debt, by his certain other writing obligatory sealed with his seal, bearing date the same day and year last aforesaid, acknowledged himself to be bound to one *T. W.* esq; in 5000*l.* of like lawful money, to be paid to the said *T.* when he should be thereunto afterwards required, with a condi- ^{Sets forth the condition,} tion thereunder written for payment of 2500*l.* of like lawful money, upon the twenty-seventh day of *July* in the year of our Lord 1731. with lawful interest for the same, to be made by the said H. to the said *T.* which said 2500*l.* ^{and the real debt due.} together with the interest thereof from the said 27th day of *July* in the said year of our Lord 1731. were at the time of the death of the said H. truly and justly due from the said H.

*Pleads another
bond.*

*Sets forth the
condition,*

*and the real
debt.*

*Pleads articles
entered into by
testator with a
master of one
of his ships.*

to the said T. and are still unpaid, and the said writing obligatory last mentioned still remains in its full force and effect, no ways annulled, cancelled or satisfied: *And* the said C. further says, that the said H. afterwards in his life-time, to wit, on the twenty-fifth day of *March* in the fourth year of his present majesty's reign, at *London* aforesaid, in the parish and ward aforesaid, for another true and just debt, by a certain other writing obligatory sealed with his seal, bearing date the same day and year last above mentioned, acknowledged himself to be bound to one D. C. gentleman, in three thousand pounds of like lawful money, to be paid to the said D. when he should be thereunto afterwards requested, with a condition thereunder written for payment of 1500*l* of like lawful money, to be made by the said H. to the said D. upon or before the first day of *May* then next ensuing, with lawful interest for the same; which said 1500*l*. together with the interest thereof from the twenty-fifth day of *September* in the year of our Lord 1731. were justly and truly due to the said D. from the said H. at the time of his death, and still remain unpaid, and the said writing obligatory last above mentioned still remains in its full force and effect, no ways annulled, cancelled or satisfied: *And* the said C. further says, that by certain articles indented on the first day of *August* in the year of our Lord 1727. at *London* aforesaid, in the parish and ward aforesaid, made between the said H. M. in his life-time, by the name of H. M. of *London*, esq; owner of the

the good ship or vessel called the *Martha Galley*, and of the cargo of goods shipped on board her, of the one part, and one *W. H.* by the name of *W. H.* of *Tooley-street* in *Southwark*, mariner, commander and supra-cargo of the said ship, and one *N. S.* chief mate of the said ship, of the other part, sealed with the seal of the said *H. M.* the date whereof is on the same day and year, reciting, That *whereas* the said *W.* was then bound out in the said ship as commander thereof, and supra-cargo of all the goods and merchandize loaden on board, in a certain voyage from *London* to the coast of *Africa*, and from thence to the *West-Indies*, *Spanish West-Indies*, and back to *London*, as the said *H. M.* his correspondents or assigns should order and direct; which said cargo of goods and merchandize were by invoice and bill of loading consigned to the said *W. H.* for sale, and for purchasing and making returns of the product thereof from the coast of *Africa* aforesaid, in negroes, gold, elephants teeth, and such other goods and merchandize as the coast of *Africa* should afford; and which are expressed in the orders given by the said *H. M.* to the said *W. A.* And further reciting, That *whereas* the said *N. S.* was likewise bound out in the said ship on the said voyage, as chief mate or next in command to the said *W. H.* in commanding and navigating the said ship, and in assisting the said *W. H.* in disposing the said outward cargo, and making returns for the same in manner in the said articles afterwards expressed, they the said *W. H.* and

N. S. by the said articles, for themselves, their executors and administrators, jointly and severally covenanted and agreed with the said *H. M.* his executors, administrators and assigns, that they the said *W. H.* and *N. S.* or one of them, should, and would at all times during the said intended voyage, to the utmost of their power, knowledge and skill, endeavour to promote the interest and advantage of the said *H. M.* and also should and would, not only during the said voyage, keep an exact and true account to be fairly written and entered in the book which the said *H.* had provided and delivered to them for that purpose, of all their buyings, sellings, barterings and dealings, and of all other transactions which should be daily transcribed on account of the said ship and cargo, but also, at the return of the said ship into the river of *Thames* from the said voyage, deliver or cause to be delivered up to the said *H. M.* or his assigns, the said book and the accounts fairly written and entered as aforesaid: And further that they the said *W. H.* and *N. S.* or one of them, should not only load the ship, and carry on board the said ship to the island of *Jamaica*, and there deliver to the said *H. M.* his correspondents, factors or assigns, (the dangers of the seas and mortality excepted) all such negroes as should be purchased by selling or bartering the said cargo, or any part thereof; and also consign such part, and so much of the gold, elephants teeth, and other goods and merchandizes, as should be purchased by selling or bartering the said cargo,
or

or any part thereof, on board such ship or ships, vessel or vessels, as they should be directed or permitted by orders to be signed by the said *H. M.* or his assigns, and should and would bring home to *London* on board the said ship called the *Martha Galley*, and consign to the said *H. M.* all such and so much of the gold, elephants teeth, or other goods and merchandize, as should be purchased by selling the said outward cargo, or otherwise, which should not by the order of the said *H. M.* either be loaden on board any other ship, or delivered to the correspondents of the said *H. M.* at the island of *Jamaica* aforesaid: And further, that he the said *W. H.* should and would sign bills of loading for all such goods as should be loaden on board the said ship called the *Martha Galley*, and should and would, with what other bills of loading as should be signed for such commodities as should be shipped on board any other vessel or ship by order as aforesaid, send and forward the same by the first opportunity unto the said *H. M.* or his assigns, and should and would, upon the said ship's arrival at *London*, deliver unto the said *H. M.* or his assigns, all such gold, elephants teeth, and other goods and merchandizes as should be loaded on board the said ship called the *Martha Galley*, and not delivered at the island of *Jamaica* aforesaid (the danger of the seas and restraint of princes and rulers in and during the said voyage excepted): And further that they the said *W. H.* and *N. S.* should not, nor would export, carry or permit, or suffer to be

be carried by any other person or persons whatsoever, in the said ship, any other goods, commodities or merchandizes whatsoever for sale, barter or traffick on the coast of *Africa*, other than the cargo of goods in the same articles before mentioned to be shipped on account of the said *H. M.* (except such adventures as the said *H. M.* should under his hand in writing allow them the said *W. H.* and *N. S.* as in the said articles was afterwards mentioned); but should and would, from time to time, and at all times in and during the said voyage, observe and keep all such orders, directions and instructions touching or relating to the said ship and cargo, as should from time to time be given to them or either of them, by the said *H. M.* or his assigns: And the said *H. M.* for himself, his executors and administrators, did covenant and agree to and with *W. H.* his executors, administrators and assigns by the said articles, that he the said *H. M.* his executors, administrators or assigns, should and would give or allow to the said *W. H.* four negroes out of every hundred and four as the said *W. H.* should purchase on the coast of *Africa*, and deliver alive unto the said *H. M.* or his assigns at the island of *Jamaica* aforesaid, in full satisfaction for purchasing the same; and also should and would, within forty days next after the arrival of the said ship called the *Mariba Galley* at *London*, well and truly pay, or cause to be paid unto the said *W. H.* his executors, administrators or assigns, in full of all wages and all privileges whatsoever, the sum of six pounds sterling

sterling *per* calendar month for every calendar month which should become due unto him according to the law, custom and usage among merchants in the like voyages, and so in proportion for a less time than a month, and the liberty of carrying four negroes in the said ship from the coast of *Africa* to the island of *Jamaica* on his account freight-free: And further, that he the said *H. M.* his executors, administrators or assigns, should and would, within forty days next after the sale and disposal of such homeward cargo as should be brought to *London*, well and truly pay, or cause to be paid unto the said *W. H.* his executors, administrators or assigns, for his commission and factorage thereof, five pounds sterling *per centum* to be reckoned on the net proceeds of all gold, elephants teeth, and other goods and commodities, as should be returned to *London* for such part of the outward cargo as should by the books of account kept by the said *W. H.* and *N. S.* appear to be purchased during the life-time of the said *W. H.* custom and other incident charges on account of the said goods (freight excepted) being first thereout deducted: And further, that he the said *W. H.* should have liberty on his own account, and not otherwise, to carry in the said ship the said voyage any adventure whatsoever, as the said *H. M.* should allow him as aforesaid; any thing in the said articles contained to the contrary notwithstanding: And for the true performance of every thing in the said last mentioned articles *With a penalty of 50*l.** contained on the part of the said *H. M.* to be

*That testator
has not per-
formed the ar-
ticles.*

be paid, done and performed, the said *H. M.* by the same articles bound himself, his executors and administrators, unto the said *W. H.* and *N. S.* and each of them, their and each of their executors, administrators and assigns, in the penal sum of 500 *l.* sterling: And the said *C.* further says, that the said *W. H.* and *N. S.* after the making the said articles, to wit, on the said first day of *August* in the year of our Lord 1727. aforesaid, set sail in the said ship called the *Martha Galley*, and sailed from *London* aforesaid to the coast of *Africa* aforesaid, and from thence to the said *West-Indies* and *Spanish West-Indies* aforesaid, on the said voyage; and afterwards, to wit, on the tenth day of *September* in the year of our Lord 1728. on the said voyage came back, and safely arrived in the said ship to *London* aforesaid, in the parish and ward aforesaid: And the said *W. H.* afterwards died there, and that the said *H. M.* in his life-time did not pay or cause to be paid to the said *W. H.* in his life-time, or to *S. H.* widow, executrix of the testament and last will of the said *W.* after his death, or to *S. W.* widow, executrix of the testament and last will of the said *S.* after the death of the said *S.* within forty days after the arrival of the said ship at *London* aforesaid, or at any time afterwards, the said sum of six pounds sterling *per* calendar month, for thirteen calendar months, due and payable by the said *H. M.* in his life-time to the said *W. H.* and his executors, in full of the wages and privileges of him the said *W. H.* in the said voyage, according to the

*What due
thereon.*

the law, usage and custom of merchants in the like voyeges, or any part thereof, which he ought to have done according to the form and effect of the said covenant of the said *H.* in that behalf made; but all that money still remains due and unpaid to the said executrix of the said *W. H.* And the said *C.* further says, that afterwards, to wit, on the same day and year last mentioned, there were brought to *London* aforesaid, to wit, in the parish and ward aforesaid, and then and there delivered to the said *H.* in his life-time, of the said homeward cargo in the said articles mentioned, 101 ounces, 12 penyweight of gold, and four hundred, three quarters of a hundred, and eleven pounds weight of elephants teeth, which said gold and elephants teeth were returned to *London* aforesaid by the said *W. H.* in his life-time for such part of the said homeward cargo as was purchased, and by the books of account kept by the said *W. H.* and *N. S.* appeared to have been purchased in the life-time of the said *W. H.* And that afterwards, to wit, on the same day and year last aforesaid, at *London* aforesaid, in the parish and ward aforesaid, the said gold and teeth were sold and disposed of by the said *H. M.* in his life-time, and that the said *H. M.* in his life-time did not pay or cause to be paid to the said *W. H.* in his life-time, or to the said *S.* and *S.* executrixes aforesaid, or to either of them after his death, within forty days next after the sale and disposal thereof, or at any time afterwards, the sum of 21 l. 6s. *What due thereon.*

time

time to the said *W. H.* and his executrixes, for the commission and factorage of the said *W. H.* according to the rate of *5 l. per cent.* on the net proceeds of the said gold and teeth, custom and other incident charges (freight excepted) being thereout first deducted, or any part thereof, which he ought to have done according to the form and effect of his said covenant in that behalf made; but the whole money last mentioned is still due and unpaid, and the said articles still remain in their full force and effect no ways annulled, cancelled, or any ways satisfied; and the said 500 *l.* in the said articles mentioned still remains not at all paid or satisfied. [*The defendant in like manner pleads several other like articles, and then goes on.*] And the said *C.* further says, that one *J. M.* on the sixth day of *November* new stile (being the twenty-sixth day of *Oct.* old stile) in the year of our Lord 1731. residing at *Amsterdam* in parts beyond the seas, and using commerce then and there, according to the usage and custom of merchants, made his certain bill of exchange bearing date the same day and year, the proper hand of the said *J.* being thereto subscribed, and directed the said bill to the said *H.* in his life-time then residing at *London* aforesaid, in the parish and ward aforesaid, and using commerce, and by the said bill required the said *H.* at two usances and eight days to pay that his first of exchange to Mr. *J. S.* or order, 1987 *l.* 10 *s.* sterling, for value received of the said *J. S.* and to place the same to account, as by advice from him the said *J.* and the

Articles in force.

Penalty unpaid.

Pleads a judgment recovered against her as executrix by the indorsee of a foreign bill of exchange drawn on and accepted by testator.

the said *H.* afterwards in his life-time, to wit, on the tenth day of *November* in the year of our Lord 1731. old stile, at *London* aforesaid, in the parish and ward aforesaid, had sight of the said bill, and then and there, according to the usage and custom of merchants, accepted the said bill, to pay the said money in the said bill contained, according to the tenor of the said bill, which said two usances and eight days, according to the usage and custom of merchants at the said time of making the said bill, and also from the time to the contrary whereof the memory of man is not, have been and still are two calendar months and eight days, to wit, at *London* aforesaid, in the parish and ward aforesaid; and afterwards in the life-time of the said *H.* to wit, on the twelfth day of *November* in the said year of our Lord 1731. old stile, at *London* aforesaid, in the parish and ward aforesaid, the said *J. S.* by his indorsement, his proper hand being thereunto subscribed, made upon the said bill according to the usage and custom of merchants, appointed the contents of the said bill to be paid to one *J. M.* or order, whereof the said *H.* afterwards in his life-time, to wit, on the same day and year last aforesaid, at *London* aforesaid, in the parish and ward aforesaid, had notice; and by reason thereof the said *H.* in his life-time, according to the usage and custom of merchants, became liable to pay the said *J. M.* the said sum of money in the said bill contained, according to the tenor of the said bill and indorsement; and being so liable the said *H.*
afterwards

afterwards in his life-time, to wit, on the same day and year last abovesaid, at *London* abovesaid, in the parish and ward abovesaid, in consideration thereof undertook, and then and there faithfully promised the said *J. M.* to pay him the said sum of money according to the tenor of the bill and indorsement abovesaid, which said 1987 *l.* 10 *s.* at the time of the death of the said *H.* were by the said *H.* truly and justly due and unpaid to the said *J. M.* and the said money is still unpaid to him: And that the abovesaid *J. M.* after the death of the said *H.* for recovering his damages which he had sustained by occasion of the not paying the said money, to wit, in this same term of *St. Hilary* in the fifth year of his present majesty's reign, impleaded the said *C.* as executrix of the testament of the said *H.* in the court of our said lord the king, before the king himself, the said court then and now being at *Westminster* in the said county of *Middlesex*, by bill without writ in a certain plea of trespass upon the case, upon undertaking upon the said bill of exchange, to the damage of the said *J. M.* of 2000 *l.* and it was in such manner thereupon proceeded in the said court of our said lord the king, before the king himself at *Westminster*, that he the said *J. M.* afterwards, to wit, in this same term of *St. Hilary* in the fifth year abovesaid, in the said court of our said lord the king, before the king himself at *Westminster* abovesaid, by the consideration of the said court, recovered against the said *C.* 1992 *l.* 10 *s.* for his damages which he had sustained

as well by occasion of the not performing the said promise and undertaking, as for his costs and charges by him about his suit in that behalf expended, to be levied of the goods and chattels which were of the said *H.* at the time of his death in the hands of the said *C.* to be administered, if she had so much in her hands; and if she had not so much, then 100 *s.* of the said damages for the costs and charges aforesaid to be levied of the proper goods and chattels of the said *C.* whereof the said *C.* was convicted, as by the record and proceedings thereupon remaining in the said court of our said lord the king, before the king himself at *Westminster* aforesaid, more fully appears; which said judgment still remains in its full force and effect, no ways reversed, annulled, *Judgment in force.* or any ways satisfied, and the said money by the said judgment recovered is still due and unpaid: *And* the said *C.* further says, that *Conclusion of the plea.* she has fully administered all the goods and chattels which were of the said *H.* at the time of his death in her hands to be administered, except goods and chattels to the value of 1000 *l.* and that she the said *C.* has not, nor on the day of exhibiting the said bill of the said governor and company, nor at any time afterwards had, any goods or chattels which were of the said *H.* at the time of his death, in the hands of her the said *C.* to be administered, except the goods and chattels aforesaid, to the said value of 1000 *l.* which are liable to and charged with the payment and satisfaction of the said several sums due and payable by the several writings obligatory, articles and

judgment aforesaid: And this she is ready to verify; wherefore she prays judgment if the said governor and company ought to have or maintain their said action against her, &c.

Replication.

And the said governor and company say, that they by any thing above alledged ought not to be barred from having their said action, because they say, that the said C. on the day of exhibiting the said bill of the said governor and company, had divers goods and chattels which were of the said H. at the time of his death in her hands to be administered, over and above goods and chattels sufficient to satisfy the said several sums due and payable by the several writings obligatory, articles and judgment aforesaid, wherewith the said C. could have satisfied the said governor and company their said damages aforesaid, to wit, at *London* aforesaid, in the parish and ward aforesaid: And this they pray may be inquired of by the country; *And* the said C. likewise. *And* upon this the said governor and company say, That *T. P.* esq; in his own proper right, has right, title and interest to part and share of the principal stock of the said governor and company, to the value of 1500 *l.* and now is a true proprietor of the said stock, and that the said *T. P.* is, and for the space of three months last past has been, one of the members of the said company; and that *S. R.* esq; in his own proper right, has right, title and interest to part and share of the principal stock of the said governor and company, to the value of 1000 *l.* and now is a true proprietor of the said stock, and that

Issue.
Sheriff's chal.
senged.

the said *S. R.* is, and for the space of three months last past has been, one of the members of the said company; and that the said *T. P.* and *S. R.* now are and for the space of four months last past have been sheriffs of *London* aforesaid: And this they are ready to verify; and for that cause the said governor and company pray the writ of our said lord the king to cause to come here twelve, &c. to try the said issue joined between the said parties, to be directed to the coroners of the city of *London* aforesaid; and because the said *C.* does not deny, but acknowledges the said allegation of the said governor and company, it is granted to them. *Therefore* let a jury thereupon come before our lord the king at *Westminster* on *Saturday* next after the octave of the purification of the Blessed Virgin *Mary*, and who are in no wise of kin either to the said governor and company, or to the said *C.* to take cognizance upon their oaths of the whole truth of the premisses; because as well the said *C.* as the said governor and company, have put themselves upon that jury. The same day is given to the parties aforesaid at the same place: At which day before our lord the king at *Westminster* came the parties aforesaid by their attornies aforesaid; and the coroner of *London* did not return the said writ, nor did he do any thing thereupon: *Therefore* let a jury thereupon, as before, come before our lord the king at *Westminster* on *Wednesday* next after fifteen days from the day of *Easter*, and who are in no wise of kin

Venire to the
coroner prayed
and granted.

Venire facias.

Coronator
non misit
breve.
Continuare.

either to the said governor and company or to the said C. to take cognizance upon their oaths of the whole truth of the premisses; because as well the said C. as the said governor and company have put themselves upon that jury. The same day is given to the parties aforesaid at the same place: At which day before our lord the king at *Westminster* came the parties aforesaid by their attorneys aforesaid; and the coroner of *London* did not return the said writ, nor did he do any thing thereupon: *Therefore, &c.* (the *venire facias* was continued in the same manner by *coronator non misit breve*, to *Trinity term 1734.*)

Distringas.

Afterwards the process being continued between the parties aforesaid of the plea aforesaid, by the jury being respited between them before our lord the king at *Westminster* until * *Wednesday* next after three weeks from the day of *St. Michael* then next following, unless the king's right trusty and well beloved *Philip* lord *Hardwicke*, his chief justice assigned to hold pleas before the king himself, shall first come on *Friday* the fifth day of *July* at the *Guildhall* of the city of *London*, according to the form of the statute in such case made and provided, for default of the jurors, because none of them did appear: At which day before our lord the king at *Westminster* the aforesaid governor and company come by the aforesaid their attorney aforesaid; and the aforesaid

* No such return at this day. See *Vol. 1. p.*

aforesaid chief justice, before whom the said issue was tried, sent thither his record had in these words, *Afterwards*, that is to say, on the day and at the place within contained, before *Philip* lord *Hardwicke*, the chief justice within written, *C. H. gent.* being associated unto the said chief justice by force of the statute in that case made and provided, came as well the within-named governor and company of the bank of *England* by their attorney within contained, as the within-named *C. M.* by her attorney within-named; and the jurors of that jury having been summoned likewise, come to wit, *S. M. R. B. J. R. J. A. J. A. G. M. J. L. B. B. H. D. S. B. P. S.* and *J. L. Q.* who being chosen, tried and sworn to declare the truth of the issue within contained, upon their oath say, *That H. M.* within mentioned was at the time of his death, which happened on the sixteenth day of *November* which was in the year of our Lord 1731. indebted to the plaintiffs the said governor and company of the bank of *England*, in the sum of 28993 *l.* 8 *s.* 1 *d.* for so much money by the said *H. M.* in his life-time had and received to the use of the said plaintiffs; and the said jurors upon their oath further say, that the money due at the death of the said *H. M.* for principal money and interest of the sums mentioned in the several conditions of the within mentioned bond from *H. M.* to Sir *W. M.* bart. and on the within mentioned bonds to *T. W.* and *D. C.* esqrs. together with the several penal sums of all the other specialties within plead-

Postea.

Special ver-
dict.

ed, and the money recovered by the judgment within pleaded, amount together to the sum of 22182*l.* 10*s.* which said sum of 22182*l.* 10*s.* or any part thereof, was not paid at the time of pleading the within-mentioned plea of the said defendant, but then remained due and unsatisfied, and that the defendant *C. M.* at the day of exhibiting the said plaintiff's bill against her within-mentioned, had assets in her hands of the said *H. M.* to the value of 41152*l.* 2*s.* 5*d.* and the said jurors upon their oath further say, that on the aforesaid day of the death of the said *H. M.* there was justly due and owing from him to the said Sir *W. M.* of the sum payable by the condition of his bond within-mentioned, and for all interest due by the said condition, the sum of 6530*l.* and that there was due to the said *T. W.* from the said *H. M.* on the said day of his death, for the principal sum mentioned in the condition of his bond, and for all interest thereof, the sum of 2520*l.* and that there was due to the said *D. C.* from the said *H. M.* on the aforesaid day of his death, for the principal sum mentioned in the condition of his bond, and for all interest thereof, the sum of 1540*l.* as the said *C. M.* has alledged in the plea within mentioned: And the said jurors upon their oath further say, that on the day of exhibiting the said plaintiffs bill against the said *C. M.* she the said *C.* had not in her hands assets of the said *H. C.* sufficient to discharge the penalties of the within mentioned three bonds

bonds to Sir *W. M. T. W.* and *D. C.* and that the said penalties or any of them were not then paid, discharged or satisfied : And the said jurors upon their oath further say, that deducting the above mentioned sum of 22182*l.* 10*s.* out of the said sum of 41152*l.* 2*s.* 5*d.* there remained in the hands of the said *C. M.* on the day of exhibiting the plaintiffs said bill against her, the sum of 18969*l.* 12*s.* 5*d.* assets of the said *H. M.* liable to satisfy the aforesaid debt of 28993*l.* 8*s.* 1*d.* found due to the plaintiffs as aforesaid, if the penal sums in the aforesaid three bonds to Sir *W. M. T. W.* and *D. C.* ought not in this case to be allowed as charges upon the assets of the said *H. M.* but whether the said three penal sums ought to be allowed in this case as charges upon the said assets or not, the said jurors know not ; and thereupon they pray the advice of the court here in the premisses ; if upon the whole matter aforesaid it shall appear to the court that the said three penal sums ought not in this case to be allowed as charges upon the said assets, then the said jurors upon their oath say, that as to the 32d promise laid in the plaintiff's declaration within mentioned, the within mentioned *H. M.* was indebted in his life-time and on the day of his death to the plaintiffs the governor and company of the bank of *England* in the said sum of 28993*l.* 8*s.* 1*d.* being money had and received by the said *H. M.* to the use of the said plaintiffs, and assess their damages upon the aforesaid 32d promise at 28993*l.* 8*s.* 1*d.* and 40*s.* for costs ; and further say,

that in such case the within mentioned *C. M.* had, on the day of exhibiting the plaintiffs bill afore said, affets in her hands of the said *H. M.* liable to the demands of the said plaintiffs to the value of 18969 12 s. 5 d. and as to all the other promises mentioned in the plaintiffs declaration afore said, they say, that the said *H. M.* did not make such other promises as therein mentioned, as the said *C. M.* has by pleading alledged. But if upon the whole matter found it shall appear to the said court, that the penal sums in the said three bonds ought in this case to be allowed as charges upon the said affets, then the said jurors say, that the within mentioned *C. M.* had not, on the day of exhibiting the said plaintiffs bill against her, any affets of the said *H. M.* in her hands liable to the demand of the said plaintiffs, as she the said *C.* hath by her plea within alledged in her defence: *But* because the court of our said lord the king now here is not yet advised about giving judgment of and concerning the premisses, day is therefore given to the said parties to come before our lord the king at *Westminster*, on *Thursday* next after the octave of *St. Hilary*, to hear judgment of and upon the same premisses, for that the court of our said lord the king now here is not yet advised thereof.

Curia advisare
vult.

Wednesday

Wednesday next after the octave of the
purification of the virgin Mary in the
ninth year of king George the second.

IT is ordered, that judgment be entered for *Rule for judgment on the special verdict.*
the plaintiffs, and the court being of opinion, that the penal sums in the two bonds to *T. W.* and *D. C.* in the pleadings in this cause mentioned ought to be allowed as charges upon the assets of *H. M.* the defendant's testator, and the penal sum in the bond to *Sir W. M.* in the said pleadings also mentioned ought not to be so allowed, but that only the principal sum of five thousand pounds payable on the twenty-fourth day of *June* one thousand seven hundred and thirty-two, and the farther sum of one thousand five hundred pounds, payable on the twenty-fourth day of *June* one thousand seven hundred and thirty-three, mentioned in the condition of the said bond to *Sir W. M.* with all interest for the two last mentioned sums from the twenty-fourth day of *June* one thousand seven hundred and thirty-one to the respective days of payment thereof, ought in this case to be allowed as charges upon the assets of the said *H. M.* by the assent of the said plaintiffs, the sum of four thousand three hundred and ten pounds being deducted out of the sum of eighteen thousand nine hundred and sixty-nine pounds twelve shillings and five-pence in the said pleadings also mentioned. *It is further ordered,*

ordered, that judgment be entered for fourteen thousand six hundred and fifty-nine pounds twelve shillings and five-pence, affets of the said *H. M.* in the hands of the said defendant. Upon the motion of Mr. *Strange*.

By the court.

Michaelmas term in the year
of, &c.

*For words
spoke of a dyer
in the way of
his trade.*

London, *W. H.* complains of *S. F.* in the
to wit, *W.* custody of the marshal of the
Marshalsea of our lord the king, before the
king himself, for that, to wit, That *whereas*
the said *W. H.* is a good, true, faithful, credible and honest subject and liegeman of our said lord the now king, and has from his birth hitherto behaved and carried himself as a good, true, faithful and honest subject; and whereas the said *W.* now uses and exercises, and for the space of several years last past has used and exercised the art or mystery of a dyer, and now is, and for divers years last past has been a freeman of the city of *London*, and the said art and mystery in buying, selling, bargaining, working, labouring, and other such-like things belonging to the said art or mystery of a dyer, with divers subjects of our said lord the king, as well within the said city as elsewhere within the kingdom of *Great Britain*, for the whole time aforesaid has used and exercised, and still exercises

erces without any falsity, fraud, theft, felony or other noxious crime, stain or question or suspicion whatsoever, and has behaved himself honestly and justly in all his affairs, contracts and businesses, and obtained and got great gain and profit by the way of buying, selling, bargaining, working and labouring in the said art or mystery of a dyer, to the handsome maintenance of the said *W. H.* and his family, and very great increase of his riches; yet the said *H.* not being ignorant of the premisses, but greatly envying the said happy state of the said *W. H.* and contriving and most wickedly intending intirely to deprive the said *W. H.* of his good name, fame, credit and reputation, and also to bring him into an ill name, fame, discredit and extreme displeasure among his neighbours and other subjects of our said lord the present king, by whom the said *W. H.* is known, and to damage him in his business, on the seventh day of *July* in year of the reign of our said lord the present king, at *London* aforesaid, to wit, in the parish of *St. Mary le Bow* in the ward of *Cheap*, having discourse with divers subjects of our said lord the present king, concerning the said *W. H.* and his art or mystery aforesaid, openly said, and with a loud voice pronounced of the said *W. H.* in the presence and hearing of divers subjects of our lord the present king, certain false, feigned, scandalous, opprobrious and defamatory words, purporting, that the said *W. H.* used to defraud them, who intrusted him

Verba pur-
portantia.

him with their goods to be dyed in his said art of a dyer, of such their goods, and converted the same to his own proper use: *And also whereas* the said S. of his further malice, on the same day and year at *London* aforesaid, in the parish and ward aforesaid, having discourse with divers subjects of our said lord the present king concerning the said *W. H.* and his said art and mystery openly in the presence and hearing of the said several subjects of our said lord the present king, said of the said *W. H.* that the said *W.* used to defraud those, who intrusted him with their goods to be dyed in his said art of a dyer, of such their goods, and convert the same to his own proper use: *And also whereas* one *W. H.* had intrusted the said *W. H.* with two pieces of shalloon to be dyed by the said *W. H.* in his said art of a dyer, the said S. of his further malice, on the same day at *London* aforesaid, in the parish and ward aforesaid, having conversation of the said *W. H.* spoke of the said *W. H.* in the presence and hearing of divers subjects of our said lord the present king, other false, scandalous and opprobrious words, purporting, that the said *W. H.* had taken off the seals from the said two pieces of shalloon, with intent to defraud the said *W. H.* and that the said *W.* after the said two pieces were dyed, sold the same to one Mr. S. for his the said *W. H.*'s own use: *And also whereas* the said *W. H.* had intrusted the said *W. H.* with two other pieces of shalloon to be dyed by the said *H.* in his said art of a dyer, the said S,

Verba pur-
portantia.

S. of his further malice, on the same day and year at *London* aforesaid, in the parish and ward aforesaid, having discourse concerning the said *W. H.* openly in the presence and hearing of divers subjects of our said lord the present king, said of the said *W. H.* that the said *W. H.* had taken off the seals from the said two pieces of shalloon, with intent to defraud the said *W. H.* and that the said *W. H.* after the said two pieces were dyed, sold the same to one Mr. S. for his the said *W. H.*'s own use: *And whereas* one *J. B.* had intrusted the said *W. H.* with one piece of shalloon to be dyed by the said *W. H.* in his said art of a dyer, the said S. afterwards of his further malice, on the same day and year at *London* aforesaid, in the parish and ward aforesaid, having discourse concerning the said *W. H.* in the presence and hearing of divers subjects of our said lord the present king, said certain other false, scandalous and opprobrious words of the said *W. H.* purporting, that the said *W. H.* had taken the said piece of shalloon of the said *J. B.* and had dyed it black, and had given it to his taylor to be sold for his the said *W. H.*'s benefit, and had defrauded the owner (meaning the said *J. B.*) thereof: *And also whereas* the said *J. B.* had intrusted the said *W. H.* with one other piece of shalloon to be dyed by the said *W. H.* in his said art of a dyer; the said S. afterwards of his further malice, on the same day and year at *London* aforesaid, in the parish and ward aforesaid, having discourse concerning the said *W.*

Verba pur-
portantia.

W. H. in the presence and hearing of divers subjects of our said lord the present king, said of the said *W. H.* that the said *W. H.* had taken the said piece of shalloon of the said *J. B.*'s, and had it dyed black, and had given it to his taylor to be sold for his the said *W. H.*'s benefit, and had defrauded the owner. (meaning the said *J. B.*) thereof: By means of the speaking and publishing of which said several false, feigned, scandalous and defamatory words, the said *W. H.* is very much hurt, scandalized and injured in his good name, fame, credit, reputation, and in his said business; And the said *W. H.* has thereby lost divers sums of money and great profit, and is very much hindered in transacting his lawful business; Therefore the said *W.* says he is injured, and has damage to the value of two hundred pounds; and thereupon he brings suit, &c.

Pledges, &c.

Covenant;

Covenant.

*Trinity term in the twenty-seventh and
twenty-eighth years of the reign of
king George the second.*

London, T G. complains of R. C. being in
to wit, the custody of the marshal of
the *Marshalsea* of our lord the king, before
the king himself, in a plea of breach of co-
venant, For that whereas by a certain charter-
party of affreightment made at *London* a-
foresaid, to wit, in the parish of *St. Mary le
Bow* in the ward of *Cheap*, on the ninth day
of *August* in the year of our Lord one thousand
seven hundred and fifty-three, between the
said J. by the name of J. G. master of the
good ship or sloop called the *P.* burthen one
hundred tons or thereabouts, then in the river
of *Thames*, of the one part, and the said R.
by the name of Mr. R. C. of *London*, mer-
chant, freighter of the said ship, of the other
part, (the counter-part of which said charter-
party of affreightment sealed with the seal of
the said R. the said J. brings here into court,
the date whereof is the day and year above-
said) *It is witnessed* that the said master, for
the considerations thereafter mentioned, had
granted and let, and the freighter had ac-
cordingly hired and taken the said ship to
freight by the month, for a voyage with her
to

*Declaration in
covenant on a
charter-party
of affreight-
ment.*

Covenant.

to be made from the port of *London* to the island of *New Providence* and back to *London*, at the monthly freight thereafter expressed, and on the terms and conditions following ; First, the said master for himself, his executors and administrators, did covenant, promise and agree to and with the said freighter, his executors, administrators and assigns, by the said charter-party of affreightment, that the ship being tight, staunch and strong, and well manned, tackled and provided with provisions and stores of all kinds fit and necessary for such a ship, and the voyage thereafter mentioned, should stay in the river of *Thames* as long as the said freighter should think proper, and load, receive and take on board her from the said freighter, his factors or assigns, all such goods and merchandize as he or they should tender to be loaden, not exceeding what the said ship could reasonably stow and carry, over and above her tackle, apparel and furniture, and therewith directly, as wind and weather would permit, sail and proceed to the said island of *New Providence* aforesaid, and there stay for such time as the said freighter, his factors or assigns should think proper, and unload and deliver all such goods and merchandizes as should have been by him or them laden on board the said ship in the river of *Thames* ; and then and there load, receive and take on board her from the said freighter, his factors or assigns, all such goods and merchandize as he or they should tender, not exceeding what the
the

the said ship could reasonably stow and carry in manner as aforesaid, and therewith directly, wind and weather permitting, sail and return to the port of *London*, and there stay to unload and deliver to the said freighter, his factors or assigns, all such goods and merchandize as should have been by him or them laden on board the said ship at the island of *New Providence* aforesaid, and so end her voyage, the perils and dangers of the seas and restraint of princes and rulers during the said voyage always excepted. *And* further, the said master did by the said charter-party of affreightment covenant and promise to pay and discharge all seamens wages, victualling the said ship, port charges, pilotage, and all other charges and expences whatsoever, that should accrue during the said voyage; And did also covenant that the said ship's cargo, both out and home, should be stowed to the best advantage; in consideration whereof the said freighter for himself, his executors and administrators, did covenant, promise and agree to and with the said master, his executors, administrators and assigns, by the said charter-party of affreightment, that he the said freighter, his factors or assigns, should and would load, unload, dispatch and discharge the said ship at the several places and in manner as above mentioned; and also should and would well and truly pay or cause to be paid to the said master, his executors, administrators or assigns, monthly freight for the hire of the said ship, the full sum of forty-five pounds of lawful money of *Great*
VOL. II. O *Britain*,

Britain, per calendar month, and so in proportion for a less time than a calendar month, for all such time and so many months as the said ship should be in the service and employ of the said freighter or his assigns, until her discharge in the river of *Thames*; the said monthly freight to commence the twenty-third day of the then instant *August*, to be paid the said master, his executors, administrators or assigns, one half part thereof upon the discharge of the said ship in the river of *Thames*, and the remainder in three months then next following. And further, the said master did by the said charter-party of affreightment, covenant and agree, that if any loss or damage should happen to the said ship by distress of weather, or otherwise, during the said voyage, whereby she should be obliged to put into any port or place to refit, that the same should be made good at the expence of him the said master, his executors or administrators. And the said freighter for himself did, by the said charter-party of affreightment, covenant and agree, that he would not deduct any part of the monthly hire to become due to the said ship for the time she should be detained in procuring such repairs; and to the performance thereof the said parties to the said charter-party did bind themselves, their executors and administrators, especially the said master, the said ship, her freight and appurtenances; and the said freighter, the goods to be laden on board her, the either to the other in the penal sum of five hundred pounds sterling, firmly by the said

said charter-party, as by the said charter-party more fully appears. And the said *Y.* in fact saith, that although the said *Y.* hath well and faithfully performed and fulfilled all and singular the covenants, grants and agreements contained in the said charter-party on the part of the said *Y.* to be performed and fulfilled; yet protesting that the said *R.* hath not performed or fulfilled any of the covenants, grants or agreements in the said charter-party contained on the part of the said *R.* to be performed and fulfilled; in fact the said *Y.* saith, that the said ship being tight, staunch and strong, and well manned, tackled and provided with provisions and stores of all kinds, on the twenty-third day of *August* in the year of our Lord one thousand seven hundred and fifty-three, entered into the service and employ of the said *R.* and did stay in the river of *Thames* as long as the said *R.* did think proper, and load, receive and take on board her from the said *R.* his factors or assigns, all such goods and merchandize as he or they did tender, to be laden, and therewith directly, as wind and weather did permit, departed from the said river of *Thames* in the port of *London* outwards on her said voyage, and sailed to the said island of *New Providence*; And that the said ship afterwards, to wit, on the 13th day of *May* in the year of our Lord one thousand seven hundred add fifty-four, arrived back in the said river of *Thames* in the said port of *London*, and performed and finished her said voyage, and was from her

O 2

said

said voyage discharged, to wit, on the 22d day of *May* in the year last mentioned, at *London* aforesaid, in the parish and ward aforesaid. And the said *J.* further saith, that the said ship was in the service and employ of the said *R.* before her said discharge in the said river of *Tbames*, for the space of nine months, to wit, from the said twenty-third day of *August* in the said year of our Lord one thousand seven hundred and fifty-three, until the twenty-second day of *May* in the said year of our Lord one thousand seven hundred and fifty-four; and that the monthly freight for the hire of the said ship for the said nine months amounted to the sum of four hundred and five pounds of lawful money of *Great Britain*, at the rate of forty-five pounds of like lawful money *per* calendar month. And the said *J.* further saith, that the said *R.* did not pay to the said *J.* one half part of the said sum of four hundred and five pounds, to wit, the sum of two hundred and two pounds ten shillings, upon the discharge of the said ship in the river of *Tbames* aforesaid, according to the form and effect of the charter-party; but the said sum of two hundred and two pounds ten shillings, and every part thereof is still due and unpaid to the said *J.* contrary to the form and effect of the said charter-party; and so the said *R.* (although often requested) has not kept his said covenant so made as aforesaid, with the said *J.* but has broke the same, and has hitherto wholly refused and still doth refuse to keep the same with the said *J.* whereupon the

Covenant.

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the said J. saith he is injured, and hath sustained damage to the value of two hundred and fifty pounds: And thereupon he bringeth suit, &c.

E. D. for the plaintiff.

J. J. for the defendant.

Pledges for the prosecution } John Doe,
are } and
Richard Roe.

Mich. 19 Geo. 2.

London, T. B. complains of R. L. being in *Declaration in*
to wit, the custody of the marshal of the *covenant. B.R.*
Marshalsea of our lord the king, before the
king himself, in a plea of breach of cove-
nants, For that whereas by a certain indenture *Indenture of*
made at London aforesaid, in the parish of, *lease.*
&c. in the ward of, &c. on the second day
of November, which was in the year of our
Lord 1743. between the said T. by the name
of T. B. of, &c. of the one part, and the
said R. by the name of R. L. of, &c. of the
other part, The counterpart of which said *Profert.*
indenture, sealed with the seal of the said R.
the said T. brings here into court, the date
whereof is the day and year abovesaid, the
said T. did demise, lease, and to farm let un- *Demise.*
to the said R. All that his new-built large *Premises.*
brick mesuage or tenement and dwelling-
house, with the garden ground belonging to
it,

Covenant.

it, and also all that his large double warehouse fronting the said house, and also a summer-house next the water-side; all which said premises are situate, standing, lying and being in a certain place, commonly called or known by the name of the *Stowage* in the parish of *St Nicholas, Deptford* afore said in the said county of *Kent*, as the same were then late in the tenure, possession or occupation of him the said *T. B.* his undertenants or assigns, but then in the tenure or occupation of him the said *R. L.* together with the use of the pump standing on the other part of the said *T. B.*'s premises, in common with the rest of the tenements of him the said *T. B.* and also with the use of the wharf and crane for his the said *R.*'s, his executors, administrators and assigns own use, in landing and shipping of goods in his and their own way of business, and not otherwise, together with all ways, paths, passages, waters, water-courses, lights, easements, privileges, advantages, appurtenances and conveniencies to the said dwelling-house, garden ground, double warehouse, summer-house and premises belonging or in any wise appertaining; To have and to hold the said new brick mesuage or tenement, dwelling-house, garden ground, double warehouse, summer-house, and all and singular other the premises thereby demised, or meant, mentioned or intended to be thereby demised and letten, with their and every of their appurtenances, and every part and parcel thereof, unto the said *R.* his executors, administrators and assigns, from the feast day of *St.*

Michael

Habendum.

Michael the archangel then last past, before the day of the date of the said indenture, for and during, and until the full end and term of twenty-one years from thence next ensuing, and fully to be compleat and ended; *Yielding* and paying therefore yearly and every Reddendum. year, during the said term of twenty-one years thereby demised and letten unto the said *T.* his heirs or assigns, the yearly rent or sum of 15*l.* of lawful money of *Great Britain*, at the four most usual feast-days or times of payment of rent in the year, that is to say, upon the feasts of the birth of our Lord Christ, the Annunciation of the blessed virgin *Mary*, the Nativity of *St. John* the baptist, and *St. Michael* the archangel, by even and equal portions; the first payment thereof to be made on the feast-day of the birth of our Lord Christ next ensuing after the day of the date of the said indenture. Covenants. And the said *R.* did by the said indenture for himself, his executors, administrators and assigns, covenant, promise, grant and agree to and with the said *T.* his heirs and assigns, and to and with every of them, in manner and form following, that is to say, That he the said *R.* his executors, administrators or assigns, should and would well and truly pay or cause to be paid unto the said *T.* his heirs or assigns, or some or one of them, the said yearly rent or sum of 15*l.* thereby reserved on the several days therein before limited for payment thereof during the said term, without any fraud or covin; and also that he the said *R.* his executors, administrators or assigns, should and would at all times

Covenant.

thereafter during the said term thereby demised, when, where and as often as need should be or occasion require, at his or their own proper costs and charges repair, uphold, support, amend and keep the said mesuage or tenements, garden, double warehouse, summer-house, and premisses, in, by and with all and all manner of necessary reparations and amendments whatsoever, and the same mesuage or tenement, garden, double warehouse, summer-house and premisses, so well and sufficiently repaired, upholden, supported, amended and kept, at the end of the said term, or other sooner determination or expiration of that lease, which should first happen and come, should and would peaceably and quietly surrender and yield up unto the said T. his heirs or assigns, together with the several things following, *viz.* in the kitchen, &c. &c. as by the said indenture amongst other things more fully appears; by virtue of which said demise the said R. entered into all and singular the said demised premisses, with the appurtenances, and was and still is thereof possessed.

Defendant entered.

Plaintiff performed all covenants on his part.

And although the said T. always, ever since the making of the said indenture, hitherto hath well and truly performed and fulfilled all things contained in the said indenture on his part and behalf to be performed and fulfilled, according to the form and effect of the said indenture; yet protesting that the said R. hath not performed or fulfilled any thing contained in the said indenture on his part and behalf to be performed and fulfilled, in fact the said T. says, that at the feast of St.

*1. Breach.
One year's
rent in arrear.*

Michael

Michael the archangel in the year of our Lord 1745. 15^l. of the rent aforesaid, for one year ended on the said last mentioned feast in the year last aforesaid, at that feast were and still are in arrear and unpaid from the said *R.* to the said *T.* against the form and effect of the said indenture, and of the said covenant of the said *R.* made in that behalf as aforesaid.

And the said *T.* further says, that at the said feast of St. *Michael* the archangel in the year last aforesaid, and for the space of one whole year then last past, the said dwelling-house, ware-house and summer-house, that is to say, ten perches of the said dwelling-house, 10 perches of the said warehouse and 10 perches of the said summer-house were uncovered for want of covering, whereby the timbers, rafters and beams of the said dwelling-house, warehouse and summer-house were become rotten, ruinous and in great decay and spoiled, and the under pinnings, doors, floors, wainscots, cielings, windows, walls and partitions of the said dwelling-house, warehouse and summer-house, during all that time were in great decay and ruinous for want of repairing and amending the same; and all those premisses being so out of repair he the said *R.* suffered and permitted to be and continue out of repair for all that time, and still suffers the same to continue out of repair, against the form and effect of the said indenture, and of the covenant of the said *R.* made in that behalf as aforesaid.

And the said *T.* further says, that the said *R.* during the said term, to wit, on the first day of

November

2. Breach.

Dwelling-house, &c.

uncovered,

Whereby the timbers, &c.

became rotten, &c.

3. Breach.

Pulling down partitions.

Covenant.

November in the year of our Lord 1743. aforesaid, pulled down, prostrated and removed divers partitions, to wit, twenty-three squares of partition of and belonging to the said dwelling-house, and which at the time of making the said indenture were fixed and set up in the said dwelling-house, and were part thereof, and has taken and carried away the same from the place wherein the same were so fixed and set up, and made part of the said dwelling-house, and applied the same to his own use, against the form and effect of the said indenture, and of his aforesaid covenant made in that behalf as aforesaid. *And* so the said *T.* says, that the said *R.* (although often requested) hath not kept his said covenant so made with the said *T.* but hath broke the same, and to keep the same with the said *T.* he the said *R.* hitherto hath, and still doth wholly refuse, whereby the said *T.* says that he is injured, and hath sustained damage to the value of 40*l.* and therefore he brings his suit, &c.

Conclusion.

Pledges, to prosecute,

{ *John Doe,*
and
Richard Roe.

Plea.

*To the 1st
breach.*

And the said *R. L.* by *R. R.* his attorney, comes and defends the force and injury, when, &c. *And* as to the said breach of covenant above assigned in this, that at the feast of *St. Michael* the archangel 1745. 15*l.* of the rent aforesaid for one year ended on that feast, were

were in arrear at that feast and unpaid, the said R. says, that the said T. ought not to have or maintain his said action thereof against him, because he says, that the said 15 l. of the rent aforesaid for the said one year ended on the said feast of St. *Michael* the archangel in the year of our Lord 1745. were not, nor any part thereof was in arrear and unpaid at that feast in that year, as by the said declaration of the said T. is above supposed; and of this the said R. puts himself upon the country; and the said T. likewise. *And as to the said breach of covenant above assigned in this, that the said dwelling-house, warehouse and summer-house were uncovered for want of covering, and the under-pinnings, doors, floors, wainscots, cielings, windows, walls and partitions of the said dwelling-house, warehouse and summer-house were in great decay and ruinous for want of repairing and amending the same, the said R. says, that the said T. ought not to have or maintain his said action thereof against him, because he says, that the said dwelling-house, warehouse and summer-house were not, nor any of them, nor any part thereof, was uncovered for want of covering, nor the under-pinnings, doors, floors, wainscots, cielings, windows, walls and partitions of the said dwelling-house, warehouse or summer-house, or either of them, were, or any of them, or any part thereof, was in decay or ruinous for want of repairing and amending the same, in manner and form as the said T. hath in his said declaration in that behalf above alledged; and*

*To the second
breach.*

*To the third
breach.*

of this he puts himself upon the country ; and the said *T.* likewise. *And* as to the said breach of covenant above assigned in this, that the said *R.* during the said term did pull down, prostrate and remove divers partitions of or belonging to the said dwelling-house, and which at the time of making the said indenture were fixed and set up in the said dwelling-house, and were part thereof, and take and carry away the same from the place wherein the same were so fixed and set up, and made part of the said dwelling-house, and apply the same to his own use, the said *R.* says, that the said *T.* ought not to have or maintain his said action thereof against him, because he says, that he the said *R.* did not pull down, prostrate or remove the said partitions, or any of them, or any part thereof, in manner and form as the said *T.* in his said declaration hath above alledged ; and of this he also puts himself upon the country ; and the said *T.* likewise.

D Poole.

*Wednesday next after one month of St.
Michael in the nineteenth year of king
George the second.*

Rule for leave *B.* *to bring the* *and* *rent into court.* *L.* *It is ordered that upon bringing in-
to court the sum of 15*l.* being the
whole rent demanded by the declara-
tion, further proceedings as to the non-pay-
ment of rent be stayed ; and it is further or-
dered,*

dered, that it be referred to Mr. C. to see what is due to the plaintiff for rent, and to tax his costs, and determine thereon between the parties if he can, otherwise to report the matter to the court, but the plaintiff is at liberty to proceed for any other breaches of covenant between him and the defendant, save the non-payment of rent. Upon the motion of Mr. Poole.

By the court.

Note; The plea as to the first breach is to be omitted, and the defendant is to plead to the other breaches only.

Trin. 13 Geo. 2.

Middlesex, **B**E it remembered, That on Monday next after the octave of the purification of the blessed virgin Mary, in the term of St. Hilary now last past, before our lord the king at *Westminster*, came T. R. by G. L. who is admitted by the court of our said lord the king here to prosecute for the said T. who is within the age of one and twenty years, as the next friend of him the said T. and brought in the court of our said lord the king then there his bill against J. F. otherwise called J. F. of the parish of St. George Bloomsbury, in the county of *Middlesex*, engraver, being in the custody of the marshal, &c. of a plea of breach of covenant; and there are pledges of prosecuting, to wit, John Doe

*Memorandum
of a bill filed
on a particular
day in the next
precedent term
but one. B.R.*

Declaration in Doe and Richard Roe; which said bill follows covenant by an infant on indentures of apprenticeship, and for not instructing the apprentice, and turning him away, at the suit of an infant by his next friend.

in these words, to wit *Middlesex*, to wit, *T. R.* by *G. L.* who is admitted by the court of our sovereign lord the king here to prosecute for the said *T.* who is within the age of twenty-one years, as the next friend of him the said *T.* complains of *J. F.* otherwise called *J. F.* of the parish of *St. George Bloomsbury*, in the county of *Middlesex*, engraver, being in the custody of the marshal of the *Marshalsea* of our lord the king, before the king himself, of a plea of breach of covenant: *For that whereas*

Indenture set forth.

Profert:

by a certain indenture, made at *Westminster* in the said county of *Middlesex*, on the twenty-seventh day of *August* in the year of our Lord 1736. one part of which said indenture, sealed with the seal of the said *J.* the said *T.* brings here into court, bearing date the same day and year, the said *T.* by the name of *T. R.* son of *S. R.* of the *Middle Temple*, gent. did put himself apprentice to the said *J.* to learn his art, and with him (after the manner of an apprentice) to serve from the day of the date of the said indenture unto the full end and term of seven years from thence next following, to be fully complete and ended, during which term the said apprentice his said master faithfully should serve, his secrets keep, his lawful commands every where gladly do; he should do no damage to his said master, nor see it to be done of others, but to his power should lett or forthwith give warning to his said master of the same; he should not waste the goods of his said master, nor lend them unlawfully to any; he should not commit fornication nor contract

contract matrimony within the said term; he should not play at cards, dice, tables, or any other unlawful games, whereby his said master might have any loss; with his own goods, or others, during the said term, without licence of his said master, he should neither buy nor sell; he should not haunt taverns or playhouses, nor absent himself from his said master's service day or night unlawfully, but in all things as a faithful apprentice he should behave himself towards his said master, and all his, during the said term. And the said

J. F. for and in consideration of the sum of 31*l.* 10*s.* of lawful money of *Great Britain*, to him in hand paid by the said *S. R.* at or before the sealing and delivery of the said indenture, the receipt whereof was by the said indenture acknowledged, his said apprentice in the art of an engraver, which he then used, by the best means that he could, should teach and instruct, or cause to be taught and instructed, finding unto the said apprentice sufficient meat, drink, lodging, and all other necessities during the said term. And for the true performance of all and every the said covenants and agreements, either of the said parties bound himself unto the other by the said indenture, as by the said indenture more fully appears. *In pursuance* of which inden-

ture the said *T.* entered into the service of the said *J.* and continued therein from the day of the date of the said indenture until the twenty-ninth day of *January* in the year of

our Lord 1738. And although the said *T.* during that time well and truly performed and

Plaintiff entered into defendant's service.

Plaintiff performed every thing on his fulfilled part.

Covenant.

1. *Breach.*
Did not in-
struct plaintiff
in his trade.

2. *Breach.*
Turned plain-
tiff out of his
service.

Imparlance.

fulfilled all and singular the said covenants and agreements in the said indenture contained, on his part and behalf to be done and performed, according to the form and effect of the said indenture: *Nevertheless* the said *J.* during the said time that the said *T.* so continued in the said service of the said *J.* as aforesaid, did not teach and instruct, or cause to be taught and instructed, the said *T.* his apprentice in the said art of an engraver, which he then used, by the best means that he could, according to the form and effect of his said covenant, so made with the said *T.* in that respect as aforesaid, but neglected so to do. *And* the said *J.* afterwards, during the said term, to wit, on the said twenty-ninth day of *January* in the year last above-mentioned, against the will of the said *T.* put away and turned out the said *T.* from the service of the said *J.* contrary to the form and effect of the said covenant of the said *J.* so made with the said *T.* in that respect as aforesaid. *And* so the said *J.* (although often requested) has not kept his said covenant so made with the said *T.* in that respect as aforesaid, but has broke it, and has hitherto wholly refused, and still refuses, to keep the same with the said *T.* to the damage of the said *T.* of 100*l.* *And* thereupon he brings suit, &c.

And now at this day, to wit, *Friday* next after the morrow of the Holy *Trinity* in this same term, to which day the said *J. P.* had licence to imparle to the bill aforesaid, and then to answer, &c. before our lord the king
at

at *Westminster*, come as well the said *T.* by the said *G. L.* his next friend aforesaid, as the said *J.* by *T. J.* his attorney. And the said *J.* *Plea that he* defends the wrong and injury when, &c. And *instructed de-* says, that the said *T.* ought not to have or *endant.* maintain his said action against him, because as to the said breach of covenant in the said declaration first above assigned, he the said *J.* saith that after the making the said indenture; and during the time that he the said *T.* continued in the said service of the said *J.* he the said *J.* did teach and instruct the said *T.* in the said art of an engraver, which he the said *J.* then used, by the best means that he could, according to the form and effect of his said covenant; in this behalf made. And of this he puts himself upon the country. And the said *T.* likewise, &c. And the said *J.* as to *Issue:* the said breach of covenant in the said declaration last above assigned; says that he the *That he did* said *J.* after the making of the said indenture, *not turn him* and during the said term did not, against the *away, &c.* will of the said *T.* put away and turn out the said *T.* from the said service of the said *J.* And of this he puts himself upon the country. And the said *T.* likewise, &c. *Therefore, as* *Issue.* well to try that issue; as the other issue afore- *Venire facias* said above joined between the said parties, *to try both is-* let a jury come before our lord the king, at *sues awarded.* *Westminster*, on *Wednesday* next after three weeks of the Holy Trinity. And who neither, &c. To recognize, &c. Because as well, &c. The same day is given to the parties aforesaid, there, &c.

*Declaration in
covenant a-
gainst the as-
signee of a les-
see for years,
for non-pay-
ment of rent.
B. R.
Recital of
lease.*

Profert.

Demise.

Premises.

*Hertfordshire, to wit, T. H. gent. com-
plaineth of B. S. widow, assignee of R. F.
deceased, in the custody of the marshal of
the Marshalsea of our lord the king, before
the king himself, in a plea of breach of co-
venant; For that whereas the said T. by a cer-
tain indenture made at Berkamstead St. Pe-
ter's in the county of Hertford aforesaid, in
the life-time of the said R. to wit, on the
18th day of August in the year of our Lord
2735. between the said T. by the name of
T. H. of Barkamstead St. Peter's aforesaid in
the county of H. aforesaid, gent. of the one
part, and the said R. by the name of R. F.
of the same place surgeon of the other part,
The counterpart of which said indenture,
sealed with the seal of the said R. the said
T. bringeth here into court, bearing date the
same day and year, for the consideration
therein mentioned, did demise, lease, and
to farm let, unto the said R. F. his execu-
tors, administrators and assigns, All that his
messuage, tenement or dwelling-house, situate,
standing and being in the high-street of
Berkamstead St. Peter's aforesaid, then in the
possession or occupation of the said T. H. his
assignee or assigns, and adjoining to or lying
next to the messuage or tenement of the said
T. H. in possession of Mrs. A. A. on the
east, and to the charity-school the gift of
T. B. esq; on the west, and also the range
of buildings behind the thereby intended to
be demised messuage, lying next to or abut-
ting on the said school, and the stable and
granaries*

Covenant.

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granaries over the same, with the gate-way and hay-loft over it, with free liberty of ingress, egress and regress, to and for the said *R. F.* his executors, administrators and assigns, servants, familiars and friends; at any time or times during the said demise, to come, go, pass or repass, in and by and through the gates next the street to the stable only with horses, or otherwise as occasion should require, he or they locking the said gates up on nights, together with all and every the yards, area's, walks, poundways, waters, and appurtenances whatsoever, to the same premises then belonging, used, or in any ways appertaining, then in the occupation of the said *T. H.* his assignee or assigns, and used with or reputed to belong to the same messuage or tenement (except and al-
Exception.
ways reserved out of the said demise and lease full and free liberty of ingress, egress and regress, to and for the said *Mrs. A. A.* her executors, administrators or assigns, servants, familiars and friends, or the tenant for the time being of the said messuage wherein she dwells, with waggons, carts, carriages, or otherwise to carry in wood through the gate-way thereby demise'd, and to pass and repass with dung to the dunghill, when and as often as she or they should have occasion, without any hindrance or interruption by the said *R. F.* his executors, administrators or assigns, by stopping or hindering the passage in the gateway, or otherwise; and also except to the said *T. H.* his heirs or assigns, the great stable, with the lofts over the
same;

Habendum.

same, and the granary over the said Mrs. A. A.'s woodhouse;) *To have and to hold* the said mesuage, tenement or dwelling-house, and all other the aforesaid demised and leased premisses, and every part and parcel thereof, with their and every of their appurtenances, (except as before excepted) unto the said R. F. his executors, administrators and assigns, from the feast-day of St. Michael the archangel next ensuing the date of the said indenture, unto the full end and term of twelve years from thence next and immediately ensuing;

Reddendum.

and fully to be complete and ended: *Yielding and paying* therefore yearly and every year, for and during the said term of twelve years, unto the said T. H. his heirs and assigns, at or in the then dwelling-house of E. W. widow, in the parish of N. in the said county of H. the yearly rent or sum of 12 l. of lawful money of Great Britain, at two usual feasts or days of payment in the year, that is to say, at the feast-day of the annunciation of the blessed virgin Mary, and St. Michael the archangel, by even and equal portions; the first payment thereof to begin and be made on the feast-day of the annunciation of the blessed virgin Mary next ensuing the commencement of the said indenture.

Covenant to
pay the rent.

And the said R. F. for himself, his heirs, executors, administrators and assigns, and for every of them, in and by the said indenture did covenant, promise and grant, to and with the said T. H. his heirs and assigns, and to and with every of them, in manner and form following; that is to say, that

that he the said *R. F.* his executors, administrators and assigns, or some of them, should and would well and truly pay, or cause to be paid unto the said *T. H.* his heirs or assigns, the said yearly rent or sum of 12*l.* of good and lawful money of *Great Britain*, therein before reserved, at the times and place therein before mentioned or limited for the payment thereof, according to the true intent and meaning of the said indenture, as by the said indenture more fully appeareth. *By virtue* of which said demise *Lessee enters.* thereof, the said *R.* entered into the said demised premises with the appurtenances, and was possessed thereof: *And being* so possessed thereof, afterwards, to wit, on the 1st day of *February* in the year of our Lord 1743. the said demised premises with the appurtenances, and all the estate, right, title, interest and term of years of the said *R.* therein then to come and unexpired, came to the said *B.* by assignment. *By virtue* of which assignment thereof the said *B.* entered *Premises assigned to defendant.* into the said demised and assigned premises, with the appurtenances, and was and still is possessed thereof. *And being* so possessed thereof, she the said *B.* did not pay, or cause to be paid unto the said *T.* 6*l.* of the said yearly rent of 12*l.* which became due from the said *B.* to the said *T.* after the said assignment, for half a year of the said term, ending on the feast of *St. Michael* the archangel in the year of our Lord 1744. on that feast, according to the form and effect of the said covenant of the said *R.* so made with the said

said T. in that respect as aforesaid, or any part of the said 6l. at any time hitherto, but the said 6l. of the rent aforesaid still remain due and in arrear from the said B. to the said T. contrary to the form and effect of that covenant: And so the said T. saith that the said B. after the said assignment so made to her as aforesaid, (although often requested) hath not kept the said covenant of the said R. so made with the said T. in that respect as aforesaid, but hath broke it, and hath hitherto wholly refused, and still refuseth to keep the same with the said T. to the damage of the said T. of 10l. And thereof he bringeth suit, &c.

J. D.
Pledges to prosecute } and
R. R.

*Plea, that
nothing of the
premises ever
came to the
defendant by
assignment.*

And the said B. by G. W. G. her attorney cometh and defendeth the force and injury when, &c. and saith that the said T. ought not to have or maintain his said action thereupon against her, because she saith that nothing of the said demised premises with the appurtenances ever came to the said B. by assignment, as the aforesaid T. by his declaration has above alledged; and this she is ready to verify: Wherefore she prayeth judgment, if the said T. ought to have or maintain his said action thereupon against her, &c.

J. Lacy.

And

And the said T. saith, that he by any thing *Replication,*
 by the said B. in her said plea above, al- *that the pre-*
 ledged, ought not to be barred from having *misses did come*
 or maintaining his said action against her, *to defendant by*
 because he saith that the said demised pre- *assignment.*
 misses, with the appurtenances, did come to
 the said B. by assignment, as he has before
 alledged; And of this he putteth himself
 upon the country: And the said B. doth so
 likewise, &c. Therefore, &c.

W. Wynne.

Debt.

Hilary term in the ninth year of the
 reign of king George the second.

Southampton, *H.* R. complains of W. G. in *Declaration in*
 to wit, *H.* the custody of the mar- *debt on the*
 shal of the *statute against*
Marshalsea of bribery at
 our lord the king being, before the king him- *elections.*
 self, in a plea, that he render to the said H.
 one thousand pounds, which he owes to the
 said H. and unjustly detains; *Recital of the*
 on the day of in the *writ of*
 year of the reign of his pre- *election.*
 sent majesty, there issued out of his said ma-
 jesty's court of Chancery at Westminster in the
 P 4 county

county of *Middlesex*, a certain writ of his said majesty's under the great seal of *Great Britain*, directed to the then sheriff of his majesty's county of *Southampton*; by which said writ his said majesty reciting, That whereas, by the advice and assent of his said majesty's counsel for certain arduous and urgent affairs touching his said majesty, the state and defence of his kingdom of *Great Britain*, and the church, his said majesty had ordered a certain parliament to be holden at his said majesty's city of *Westminster* the day of _____ then next ensuing, there to treat and have conference with the prelates, great men and peers of his said majesty's realm, did command and strictly injoin the said sheriff, that proclamation being made in his next county-court, after the reception of that his said majesty's writ to be holden at the time and place aforesaid, two knights girt with swords, of the most fit and discreet of the said county, and of every city of that county two citizens, and of every borough two burgeses of the most discreet and sufficient, freely and indifferently by them, who at such proclamation should be present, the said sheriff should cause to be elected, according to the form of the statute in that case made and provided; and the names of such knights, citizens and burgeses so elected, in certain indentures thereupon to be made between the said sheriff and them who should be present at such election to be inserted (whether the person so elected should be present or absent) and them at the same day and place

place should cause to come in such manner; that the said knights full and sufficient power for themselves and the commonalty of the same county, and the said citizens and burgeses for themselves and the commonalty of the said cities and boroughs, severally for them, might have to do and consent to those things, which then and there by the common council of his said majesty's kingdom aforesaid (with God's assistance) should happen to be ordained upon the affairs aforesaid; so that through defect of such power, or by an improvident election of such knights, citizens and burgeses, the said affairs might not in any wise remain unprovided for; willing nevertheless that neither the said sheriff, or any other sheriff of that his said majesty's kingdom aforesaid, in any wise should be elected, and the said election in full county of the same sheriff so made distinctly and openly, under the seal of the same sheriff, and the seals of them who should be present at such election, the same sheriff should certify to his said majesty in *Chancery* at the day and place aforesaid, without delay, remitting to his majesty one part of the aforesaid indentures sewed to the said writ, together with the said writ; by virtue of which writ *A. B. esq;* then, and until, at and after the return of the said writ being sheriff of the said county of *Southampton*, afterwards and before the return of the said writ, to wit on the same day of _____ in the year of our Lord _____ at the borough of _____ aforesaid in the said county of *Southampton*, made his

*And of the
sheriff's pre-
cept thereon.*

his certain precept in writing, sealed with the seal of his said office of sheriff of the said county of *Southampton*, and bearing date the same day and year last mentioned, directed to the mayor, aldermen and burgeses of the said town or borough of *Southampton* afore-
 said within the said county; by which said precept the said sheriff reciting, That whereas by the advice and consent of counsel of our said sovereign lord the king, for divers weighty and urgent affairs concerning our said sovereign lord the king, the estate and defence of the kingdom, and the church, our said sovereign lord the king had ordained, that a certain parliament should be held at the city of *Westminster* on *Tuesday* the *xxv* day of *April* then next ensuing, to have conference with the prelates, great men and peers of the realm; therefore the said sheriff, by virtue of the said writ of our said sovereign lord the king to him directed, required the said mayor, aldermen and burgeses, and every of them, That they should elect or cause to be elected, by those who should be present, two burgeses, men of good understanding, wit, knowledge and discretion, freely and indifferently (proclamation being first made according to the form of the statute in that case made and provided) to serve in the said parliament for the said town or borough; and that they should cause to be inserted the names of the persons so elected, in certain indentures to be made between him the said sheriff and those who should make such election, whether the persons so elected be present or absent; and so
 that

that the said burgesſes ſhould have full power and authority, for themſelves and the whole commonalty of the ſaid town or borough, to do and conſent to ſuch things, as with God's aſſiſtance in the ſaid parliament ſhould happen to be ordained upon the affairs aforeſaid; by virtue of which ſaid precept afterwards, and before the return of the ſaid writ, to wit, on the day of in the ſaid year of the reign of his ſaid majeſty, at the ſaid town or borough of in the county of *Southampton* aforeſaid, the election of two burgesſes of the ſaid town or borough, to ſerve as burgesſes of the ſaid town or borough at the then next parliament to be holden as aforeſaid, was had and made. And thereupon *E. F.* of

aforeſaid, eſq; and *G. H.* of in the county of eſq; were elected, and at the ſaid return of the ſaid writ were returned to ſerve as burgesſes for the ſaid town or borough in the ſaid parliament, to be holden as aforeſaid. The ſaid *W. G.* not regarding the ſtatute in that caſe lately made and provided, nor fearing the penalty contained therein, after the twenty-fourth day of *June* in the year of our Lord 1729. and after the iſſuing the ſaid writ, and before the ſaid election of burgesſes in and for the ſaid town or borough of to wit, on the day of aforeſaid, in the ſaid year of the reign of his ſaid majeſty, at the ſaid town or borough of aforeſaid, did corrupt and procure *W. L.* who then and at the time of the ſaid election had a right to vote in the

2d Count.

said election, to give his vote in the said election for the said *E. F.* and *G. H.* by his the said *W. G.*'s then and there corruptly agreeing with and promising the said *W. L.* as a reward for his the said *W. L.*'s giving his vote as aforesaid, to pay and give him the said *W. L.* the sum of five pounds five shillings of lawful money of *Great Britain*, contrary to the form of the statute in that case lately made and provided; by reason and means of which said corrupt agreement, and promise made as aforesaid, the said *W. L.* on the day of aforesaid in the year last aforesaid, at the said town or borough of in the said county of *Southampton*, gave his vote for the said *E. F.* and *G. H.* at and in the said election; whereby, and by virtue of the said statute, an action hath accrued to the said *F. R.* to demand and have of the said *W. G.* five hundred pounds, parcel of the said one thousand pounds. And also that the said *W. G.* not regarding the said statute, nor fearing the penalty therein contained, after the said twenty-fourth day of *June* in the said year of our Lord 1729. and after the issuing the said writ, and before the above-mentioned election of burgesses in and for the said town or borough of to wit, on the said day of in the year of the reign of his said majesty, at the said town or borough of aforesaid, did corrupt and procure another *W. L.* who then, and at the time of the aforesaid election, had a right to vote in the

the said election, to give his vote in the said election for the said *E. F.* and *G. H.* by his the said *W. G.* then and there corruptly agreeing with and promising the last named *W. L.* as a reward for his so doing, to pay him the said *W. L.* by way of loan, the sum of five pounds five shillings of lawful money of *Great Britain*, contrary to the form and effect of the said statute; by reason and means of which said corrupt agreement and promise last mentioned, the last named *W. L.* afterwards, to wit, on the said day of _____ in the last year aforesaid, at the said town or borough of _____ gave his vote for the said *E. F.* and *G. H.* at and in the said election, by reason of which said premises last mentioned, and by virtue of the said statute, an action hath accrued to the said *F. R.* to demand and have of the said *W. G.* another sum of five hundred pounds, residue of the said one thousand pounds: *Nevertbeless* the said *W. G.* although often required, has not yet paid to the said *F. R.* the said one thousand pounds, or any part thereof, but has hitherto refused and still refuses to pay the same to the said *F. R.* to the damage of the said *F. R.* of ten pounds: And thereupon he brings suit, &c.

_____ for the plaintiff.
 _____ for the defendant.

{ *John Doe,*
 Pledges of prosecuting { and
 { *Richard Roe.*

Easter

Easter 13 Geo. 2.

*Declaration in
debt on stat.
9 Ann. a-
gainst a coach-
man for carry-
ing letters.*

J. W. who prosecutes as well for our
to wit, *J.* lord the king as for himself in
this behalf, complains of *D. S.* being in the
custody of the marshal, &c. of a plea, that
he tender to our said lord the king, and the
said *J. W.* who prosecutes as well, &c. fifty
pounds of lawful money of *Great Britain*;
which he owes our said lord the king, and the
said *J. W.* who prosecutes as well, &c. and
unjustly detains; for that whereas after the
publishing of a certain act, made in the par-
liament held at *Westminster* in the ninth year
of the reign of her late majesty queen *Anne*;
intituled (An act for establishing a general post-
office for all her majesty's dominions, and for
settling a weekly sum out of the revenues
thereof for the service of the war, and other
her necessary occasions) to wit, on the first
day of *March* in the thirteenth year of the
reign of our said lord the present king, at
the borough of *Southwark* in the county afore-
said, he the said *D. S.* did then and there un-
lawfully, and without any sufficient authority;
for hire and reward, receive ten letters to be
carried from the place where they were re-
ceived, to wit, from the borough of *South-
wark* afore said, to another place within this
kingdom of *England* to the said *J. W.* un-
known, and there to be delivered to divers
persons unknown; the said *D. S.* on the said
first

first day of *March* in the year aforesaid, not being our said lord the king's post-master general appointed by our said lord the king by any letters patent under the great seal of *Great Britain*, nor the deputy or assignee of the right honourable *T. lord L.* and the honourable *Sir J. E. bart.* which said *T. lord L.* and *Sir J. E. bart.* on the said first day of *March* in the year aforesaid, and constantly from that time hitherto, by virtue of our said lord the king's letters patent under the great seal of *Great Britain* to them granted by virtue of the said statute, were and now are our said lord the king's post-master general, against the form of the said statute in that case made and provided, whereby the said *D. S.* hath forfeited to our said lord the king, and to the said *J. W.* who prosecutes as well, &c. the sum of fifty pounds of lawful money, to wit, the sum of five pounds for each letter of the aforesaid ten letters, so as aforesaid by the said *D. S.* unlawfully and without any sufficient authority received, whereby an action hath accrued to his said majesty and the said *J. W.* who prosecutes as well, &c. to require and have of the aforesaid *D. S.* the said fifty pounds. *Nevertheless* the said *D. S.* although often required, &c. hath not yet paid the said fifty pounds to our said lord the king, and the said *J. W.* who prosecutes as well, &c. But he hath hitherto altogether refused, and still doth refuse to pay the same, to the damage of the said *J. W.* who prosecutes as well, &c. of ten pounds; and therefore he brings

Debt.

brings suit as well on the behalf of his said majesty as for himself on this behalf.

_____ for the plaintiff.

_____ for the defendant:

Pledges to prosecute are { *John Doe;*
and
Richard Roe:

*Declaration in
debt on the
Stat. 3 & 4
Annæ, c. 4.
s. 4. for tra-
ding as a
hawker, under
colour of a bor-
rowed and
bired licence.*

*2. If thus
filed.*

*London, A. B. who as well for our lord the
to wit, king as for himself in this be-
half prosecuteth, came before the barons of
his exchequer on the _____ day of
in this term, by Thomas Owen his attorney;
and complaineth by bill against C. D. present
here in court on the same day, of a plea, that
he render to our said lord the king, and to
the said A. B. who as well, &c. 40 l. of lawful
money of Great Britain, which to our said
lord the king, and to the said A. B. who as
well, &c. he oweth and unjustly detaineth;
for that, to wit, that whereas one John Doe
being a hawker, in due manner licensed by
the commissioners of our said lord the king,
for licensing hawkers, pedlars, and petty
chapmen, authorised and appointed according
to the form of the statute in such case lately
made, to wit, at London aforesaid, that is to
say, in the parish of St. Mary le Bow in the
ward of Cheap, after the first day of May in
the year of our Lord 1705. to wit, on the
18th day of March in the 10th year of the
reign of our lord the present king at London
aforesaid;*

aforesaid, in the parish and ward aforesaid, (he the said *John Doe* then and afterwards there using and exercising the art and business of a hawker) lent and let out to hire *his licence* by the said commissioners to him before *What kind of licence?* that time granted, to the said *C. D.* And that he the said *C. D.* afterwards, to wit, on the same day and year, under colour of the same licence to him so as aforesaid lent and let out to hire, traded, to wit, at *London* aforesaid, in the parish and ward aforesaid, contrary to the form of the statute in such case lately made and provided, whereby, and by force of that statute, the said *C. D.* forfeited 40*l.* whereby an action accrued to our said lord the king, and to the said *A. B.* who as well, &c. to demand and have from the said *C. D.* the same 40*l.* *Nevertheless* the said *C. D.* (although often required, &c.) the same 40*l.* or any part thereof, to our said lord the present king, and to the said *A. B.* who as well, &c. hath not yet paid, but he hath hitherto altogether refused, and still doth refuse to pay them the same: Wherefore the said *A. B.* who as well, &c. saith, that he is injured, and hath damage to the value of 10*l.* And therefore as well for our said lord the king as for himself bringeth suit, &c.

London, *A. B.* who as well for our lord the king as for himself in this behalf prosecuteth, came before the barons of his exchequer on the day of *Declaration in debt on Stat. 3 & 4 Annæ, c. 4 s. 4. for that defendant, being a licensed hawker, lent*
 in this term, by *Thomas Owen* his attorney,
 Vol. II. Q and

out his licence
to hire. Scac-
cario.

Q. If the com-
missioners are
so filed.

Q. What kind
of licence this
was, if to
travel with
any, and what
horses, &c.

and complaineth by bill against *C. D.* present here in court on the same day, of a plea, that he render to our said lord the king, and to the said *A. B.* who as well, &c. 40 *l.* of lawful money of *Great Britain*, which to our said lord the king, and to the said *A. B.* who as well, &c. he oweth and unjustly detaineth, for that, to wit, that whereas the said *C. D.* being a hawker, in due manner licensed by the commissioners of our said lord the king, for licensing hawkers, pedlars, and petty chapmen, authorised and appointed according to the form of the statute in such case lately made and provided, to wit, at *London* afore said, that is to say, in the parish of *St. Mary le Bow* in the ward of *Cheap*, after the first day of *May* in the year of our Lord 1705. to wit, on the 18th day of *March* in the 10th year of the reign of our lord the present king at *London* afore said, in the parish and ward afore said, (he the said *C. D.* then and afterwards there using and exercising the art and business of a hawker,) lent and let out to hire his licence by the said commissioners before that time granted to him, to one *John Doe*, to trade under colour thereof, contrary to the form of the statute in such case lately made and provided; whereby, and by force of that statute, the said *C. D.* forfeited 40 *l.* whereby an action accrued to our said lord the king, and to the said *A. B.* who as well, &c. to demand and have of the said *C. D.* the same 40 *l.* Nevertheless the said *C. D.* (although often requested, &c.) hath not yet paid the same 40 *l.*

or

or any part thereof, to our said lord the present king, and to the said *A. B.* who as well, &c. but hath hitherto altogether refused, and doth still refuse to pay them the same: Wherefore the said *A. B.* who as well, &c. saith, that he is the worse, and hath damage to the value of 10*l.* and therefore as well for our said lord the king as for himself bringeth suit, &c.

Easter term in the seventh year of the reign of his present majesty George the second, king of Great Britain, and so forth.

Middlesex, **B**E it remembered, that hereto- *Memorandum*
to wit, **B**fore, that is to say, of the term of a precedent
of *St. Hilary* last past, before the lord the term.
king at *Westminster*, came Sir *J. A.* bart. by
A. S. his attorney, and brought here into the
court of the said lord the king then there his
certain bill against *C. K.* esq; in custody of
the marshal, and so forth; upon a plea of
debt, and so forth; and there are pledges
of prosecuting, to wit, *John Doe* and *Richard*
Roe, which said bill follows in these words:
Middlesex, to wit, Sir *J. A.* bart. complains *Declaration in*
of *C. K.* esq; being in custody of the marshal *debt on a*
of the *Marshalsea* of our sovereign lord the *judgment in*
king, before the king himself, of a plea that *the Common*
he render to the said Sir *J.* 22209*l.* lawful *Pleas.*
money of *Great Britain*, which the said *C.*
owes to the said Sir *J.* and unjustly detains
from him; for this, to wit, That whereas
the said Sir *J.* heretofore, that is to say, in

the term of *St. Hilary* in the twelfth year of the reign of his late majesty king *George* the first, in his said late majesty's court, before Sir *R. E.* knt. and his companions, then his said late majesty's justices of the bench, at *Westminster* in the said county of *Middlesex*, by consideration of the same court, recovered against the said *C.* by the name of *C. K.* late of the town of *Salop* in the county of *Salop*, esq; 2220*g* *l.* which in the same court were adjudged to the said Sir *J.* for his damages which he had sustained, as well by occasion of the said *C.*'s breaking certain covenants made between the said Sir *J.* and the said *C.* as for the said Sir *J.*'s costs and charges by him laid out about his suit in that behalf, whereof the said *C.* is convicted, as by the said record and proceedings thereof now remaining in the court of our present lord the king before his justices of the bench at *Westminster* aforesaid manifestly appears; which said judgment still remains in full force and effect, no ways reversed or annulled; and the said Sir *J.* hath not yet obtained his execution against the said *C.* of his damages aforesaid upon the said judgment; whereby an action accrued to the said Sir *J.* to demand and have of the said *C.* the said 2220*g* *l.* *Nevertheless* the said *C.* though often requested, has not yet paid the said 2220*g* *l.* to the said Sir *J.* but hath hitherto refused to pay the same to him, and still doth refuse, to the damage of the said Sir *J.* 10,000 *l.* and therefore he brings this suit, and so forth.

And

And now at this day, to wit, *Wednesday*, next after 15 days from *Easter* day in this same term, until which day the aforesaid C. had leave of imparling to the aforesaid bill, and then to answer, and so forth, before the king at *Westminster*, comes as well the aforesaid Sir J. by A. S. his attorney, as the aforesaid C. by H. R. his attorney; and the aforesaid C. *Payment* defends the force and injury, when, and so *pleaded.* forth, and saith, That the said Sir J. ought not to have or maintain his said action against him; because he saith, That he the said C. before the day of exhibiting of the said bill of the said Sir J. against him, to wit, on the 1st day of *July* in the first year of the reign of his present majesty, at *Westminster* aforesaid, paid to the said Sir J. the said sum of 22209 l. And this he is ready to verify; wherefore he prays judgment, if the said Sir J. ought to have or maintain his said action against him, &c.

And the said Sir J. saith, that he by any *Replication.* thing by the said C. above in pleading alledged, ought not to be barred from having or maintaining his said action thereof against him, because he the said Sir J. saith, That the said C. did not pay to him the said Sir J. the said sum of 22209 l. as the said C. in his said plea hath above alledged; and this he prays may be inquired of by the country; and the said C. doth the like, &c. *Therefore* let a *Issue.* jury come before the lord the king at *West-* *Venire a-* *minster,* on next after and *warded.* who neither, and so forth, to take knowledge, and so forth; because as well, and so forth. The same day is given to the same parties there, and so forth.

Hilary term in the twelfth year of king
George the second.

Memorandum
of a particular
day in the pre-
ceding term.

Debt on a
judgment, (re-
covered against
the defendant
as an execu-
trix) suggesting
a devastavit.

Middlesex, **B**E it remembered, that heretofore,
to wit, **B** that is to say, * on *Tuesday* next
after fifteen days from the day of *St. Martin*
in *Michaelmas* term last past, before our lord
the king at *Westminster*, *S. J.* came by *J. T.*
her attorney, and brought into the court of
our lord the king then and there her bill
against *M. R.* being in the custody of the
marshal of the *Marshalsea* of our said lord
the king, before the king himself, of a plea
of debt, † and there are pledges for prosecu-
ting, to wit, *John Doe* and *Richard Roe*,
which said bill follows in these words; to
wit, *Middlesex*, to wit, *S. J.* complains of
M. R. being in the custody of the marshal of
the *Marshalsea* of our lord the king, before
the king himself, of a plea, that he render to
the said *S.* thirty-five pounds of lawful money
of *Great Britain*, which the said *M.* owes to
the said *S.* and unjustly detains from her; for
that, to wit, That whereas the said *S.* in this
present *Michaelmas* term, in the court of our
said lord the king, before the king himself,
now here, to wit, at *Westminster*, by the
con-

* No such return at this day. See *Vol. 1. p.*

† Debt on an obligation against an executor in the
debet and *detinet*, suggesting a *devastavit*. Ruled for
the defendant; for the court will not allow the action to
go further than it had been before, *viz.* than debt on a
judgment. 1 *Lew.* 147. 2 *Sid.* 102.

consideration of the said court recovered against the said *M.* by the name of *M. R.* executrix of the last will and testament of *I. S.* deceased, otherwise lately called *I. S.* of the parish of *Chelsea* in the county of *Middlesex*, carpenter, as well a certain debt of thirty-five pounds, as seventeen pounds, which in the same court here were adjudged to the said *S.* for her damages which she had sustained, as well by occasion of the detaining that debt, as for her costs and charges by her about her suit in that behalf expended, to be levied of the goods and chattels which were of the said *I.* at the time of his death, if the said *M.* had so much in her hands to be administered, whereof the said *M.* was convicted, as by the record and proceedings thereof in the said court here remaining manifestly appears; and the said *S.* in fact says, that the said *M.* afterwards satisfied her the said *S.* of the said seventeen pounds for the damages aforesaid; which said judgment still remains in full force and effect as to the said debt, no ways reversed, annulled or satisfied; and the said *S.* hath not yet obtained her execution against the said *M.* of the debt aforesaid upon the said judgment. *And* the said *S.* further in fact says, that after the said judgment was given in form aforesaid, to wit, on the

*Devastavit
suggested.*

day of *November* in the twelfth year of the reign of our sovereign lord the now king at *Westminster* aforesaid in the county aforesaid, divers goods and chattels which were of the said *I.* at the time of his death, to the value of the said debt of thirty-

five pounds, came to the hands of the said *M.* to be administered ; which said goods and chattels the said *M.* afterwards, to wit, on the same day and year at *Westminster* aforesaid, sold, eloined, wasted, converted and disposed of to her proper use ; by which an action accrued to the said *S.* to demand and have of the said *M.* the said thirty-five pounds : *Nevertheless* the said *M.* although often required, *Et c.* has not yet paid the said thirty-five pounds to the said *S.* but has intirely refused, and still does refuse, to pay her the same ; whereupon she says she is damnified, and has damage to the value of ten pounds ; and thereupon she brings suit, *Et c.*

Imparlanee.

And now at this day, to wit, *Tuesday* next after the octave of *St. Hilary* in this same term, to which day the said *M.* had leave to imparle to the said bill, and then to answer, *Et c.* before our lord the king at *Westminster*, comes as well the said *S.* *J.* by her attorney aforesaid, as the said *M.* by *G. T.* her attorney ; and the said *M.* defends the force and injury, when, *Et c.* and says, that the said *S.* ought not to have or maintain her said action against her the said *M.* because she says, that there is no such record of the recovery aforesaid in the said court of our said lord the king now here remaining, as the said *S.* by her declaration has above supposed ; and this she is ready to verifify ; whereupon she prays judgment, if the said *S.* ought to have or maintain her said action against her the said *M.* *Et c.*

Plea nul tiel
record.
Vide 1 R.
Raym. 550.
Carth. 517,
453.

And

And the said S. says, that she, by any *Replication,*
 thing before alledged by the said M. in plead- *habetur tale*
 ing, ought not to be barred from having her *recordum.*
 aforesaid action against the said M. because
 she says, that there is such record of the re-
 covery aforesaid remaining in the said court
 of our said lord the king now here, before
 the king himself, to wit, at *Westminster* afore-
 said, as she the said S. has, by her said de-
 claration above supposed; and this she is rea- *ly.*
 dy to verify by that record, as appears in
Trinity term in the eleventh and twelfth years
 of the reign of our said lord the now king,
 in the roll; and she prays
 that the said term and roll may by the said
 court of our said lord the king now here be
 viewed and inspected; and because it is ne-
 cessary that the said record be viewed and in-
 spected before that judgment in this behalf
 be given, a day for that purpose is given by
 the court here before our lord the king at
Westminster, until *Wednesday* next after fifteen
 days from the day of *Easter*; and the same
 day is also given to the parties aforesaid at
 the same place.

Pleas

B. R. *Ani-
prius record.*

*Pleas before our lord the king at West-
minster, of the term of the Holy Tri-
nity in the year of the reign
of our sovereign lord
now king of* &c.

*Memorandum
of a declara-
tion of a pre-
cedent term.*

Lill. Ent. 185.

Middlesex, **B**E it remembered, that heretofore,
to wit, to wit, in *Easter* term last past,
before our lord the king at *Westminster*, came
S. D. gent. by *J. L.* his attorney, and brought
into the court of our said lord the king then
there his certain bill against *J. A.* esq; other-
wise called *J. A.* of the *Inner Temple, Lon-
don*, esq; being in the custody of the marshal
of the *Marshalsea* of our lord the king, be-
fore the king himself, of a plea of debt; and
there are pledges of prosecuting, namely,
John Doe and *Richard Roe*; which said bill
follows in these words, to wit, *Middlesex*, to
wit, S. D. gent. complains of *J. A.* esq; other-
wise called *J. A.* of the *Inner Temple; London*,
esq; being in the custody of the marshal, &c.
of a plea, that he render to him one hun-
dred and thirty pounds of lawful money of
England, which he owes him and unjustly
detains; for that, to wit, That whereas the
said *J.* on the seventeenth day of *April* in the
year of our lord one thousand seven hundred
and thirty-five, at *Westminster* in the county
aforesaid, by his writing obligatory, sealed
with the seal of the said *J.* And to the court
of our said lord the now king here shewn,
the date whereof is on the same day and year,
ac-

B. R. *Debt on
a bond.*

Profert.

acknowledged himself to be held and firmly bound to the said S. in the said one hundred and thirty pounds, to be paid to the said S. when he should be thereto afterwards required: Yet the said J. although often required, *Ec. Breach.* has not yet paid the said one hundred and thirty pounds to the said S. but has hitherto intirely refused, and still does refuse to pay him the same, to the damage of the said S. of twenty pounds; and thereupon he brings suit, *Ec.*

And now at this day, that is to say, on Friday next after the morrow of the Holy Trinity in this same term, to which day the said J. had leave to imparle to the said bill, and then to answer thereunto, before our lord the king at *Westminster*, come as well the said S. by his attorney aforesaid, as the said J. by J. M. his attorney: And the said J. defends the force and injury, when, *Ec.* and says, that he ought not to be charged with the said debt by virtue of the said writing; because he says, that that writing is not his deed; and of this he puts himself upon the country; And the said S. does so likewise, *Ec.* Therefore let a jury come thereupon before our lord the king at *Westminster*, on Wednesday next after the octave of the Holy Trinity; and who neither, *Ec.* to recognize, *Ec.* because as well, *Ec.* The same day is given to the parties aforesaid at the same place, *Ec.*

*Imparlance.**Plea non est factum.**Issue. Venire awarded.**Pleas*

Pleas before our lord the king at Westminster, of the term of the Holy Trinity in the year of the reign of our sovereign lord George the third now king of &c.

The jurat.

Middlesex, **T**HE jury between S. D. gent. to wit, by his attorney, plaintiff, and J. A. esq; otherwise called J. A. of the Inner Temple, London, esq; defendant, of a plea of debt, are respited before our lord the king at *Westminster*, until *Tuesday* next after three weeks of the Holy Trinity, unless the king's right trusty and well-beloved Sir W. L. knt. his majesty's chief justice, assigned to hold pleas in the court of our lord the king before the king himself, shall first come on *Monday* next after the said three weeks of the Holy Trinity at *Westminster*, in the great hall of pleas there, by the form of the statute, &c. for default of the jurors, &c. Therefore let the sheriff have the bodies, &c. The same day is given to the parties aforesaid at the same place.

B. R. Debt on *Middlesex,* **J.** C. complains of W. A. one of a bond by the to wit, J. the servants to W. B. esq; being in the custody of the marshal of the surviving obligee against *Marshalsea* of our lord the king, before the the executor of the king himself, executor of the testament and the obligor. last will of W. A. his late father, deceased, otherwise called W. A. of the town of *Buckingham*
 Lill. Ent. 165.

ingbam in the county of *Bucks*, draper, of a plea, that he render to him six hundred pounds of lawful money of *Great Britain*, which he unjustly detains; for that, to wit, That whereas the said *W. A.* the testator in his life-time, to wit; on the twelfth day of *November* in the twenty-seventh year of the reign of our late sovereign lord *Charles* the second, late king of *Great Britain*, &c. at *Westminster* in the county of *Middlesex* aforesaid, by his writing obligatory, sealed with the seal of the said *W. A.* the testator, in his life-time, And to Profert of the the court of our said lord the now king here bond. shewn, the date whereof is on the same day and year, acknowledged himself to be held and firmly bound to the said *J. C.* and to one *J. W.* gent. now deceased, in the said six hundred pounds to be paid to the said *J. C.* and *J. W.* when he should be thereunto afterwards required: Yet the said *W. A.* the testator Breach. in his life-time, and the said *W. A.* the now defendant, after the death of the said *W. A.* the testator, although often required, &c. have not, nor has either of them paid the said six hundred pounds to the said *J. C.* and *J. W.* or to either of them, in the life-time of the said *J. W.* or to the said *J. C.* after the death of the said *J. W.* but have refused to pay them the same: And the said *W. A.* the executor still refuses to pay the same to the said *J. C.* to the damage of the said *J. C.* of forty pounds: And thereupon he brings suit, &c.

London

B. R. Debt on a bond by the surviving executor of the obligee. *London, J. B. gent. executor of the testament to wit, J. and last will of D. B. widow, deceased, complains of A. R. esq; otherwise called A. R. of the parish of St. Martin in the*

Lill. Ent. 164. fields in the county of Middlesex, esq; being in the custody of the marshal, &c. of a plea, that he render to him one thousand and four hundred pounds of lawful money of Great Britain, which he unjustly detains, for this, to wit, That whereas the said A. on the twenty-eighth day of May in the twelfth year of the reign of the sovereign lord George the first, late king of Great Britain, &c. at London aforesaid, to wit, in the parish of St. Mary le Bow in the ward of Cheap, by his writing obligatory, sealed with the seal of the said A.

Profert of the bond.

And to the court of our lord the now king here shewn, the date whereof is on the same day and year, acknowledged himself to be held and firmly bound to the said D. in her life-time in the said one thousand and four hundred pounds, to be paid to the said D. when he should be afterwards thereto required; Yet the said A. although often required, &c. the said one thousand and four hundred pounds to the said D. in her life-time, or to the said J. after the decease of the said D. or to either of them, has not yet paid, but the said A. has hitherto intirely refused to pay the said one thousand and four hundred pounds to the said D. in her life-time, and to the said J. after the decease of the said D. and still refuses to pay the same to the said J. to the damage of the said J. of twenty pounds;

Breach.

pounds; And thereupon he brings suit, &c.

And the said J. brings here into court the Profert of the letters testamentary of the said D. by which *probate.* it sufficiently appears to the court here, that the said J. is the executor of the said testament of the said D. and has the administration thereof, &c.

London, G. L. gent. complains of Dame M. *B. R. Debt on a bond against the executrix of the obligor. Lill. Ent. 166.*
 to wit, G. S. widow, executrix of the testament and last will of Sir J. S. knight and baronet, her late husband deceased, otherwise called Sir J. S. of Briel in the county of Sussex, knight and baronet, being in the custody of the marshal of the *Marshalsea* of our lady the queen, before the queen herself, of a plea that she render to him two hundred pounds of lawful money of *England* [*Great Britain*] which she unjustly detains, for that, to wit, That whereas the said Sir J. in his life-time, to wit, on the twenty-ninth day of *October* in the year of our Lord one thousand six hundred and eighty-nine, at *London*, to wit, in the parish of *St. Mary le Bow* in the ward of *Cheap*, by his writing obligatory, sealed with the seal of the said Sir J. And to the court *Profert.* of our lady the now queen here shewn, the date whereof is on the same day and year acknowledged himself to be held and firmly bound to the said G. in the said two hundred pounds, to be paid to the said G. when he should be thereunto required; *Breach.* Yet the said Sir J. in his life-time, and the said M. after the death of the said Sir J. although often required, &c. have not, nor has either of them paid

paid the said two hundred pounds to the said G. but they have hitherto intirely refused to pay him the same; and the said M. still refuses to pay him the same, and unjustly detains, to the damage of the said G. of one hundred pounds: And thereupon he brings suit, &c.

Plea, Non est factum testatoris.
10 Co. 120. b.

Issue.
Venire facias awarded.

When, &c. and says, that she ought not to be charged with the said debt by virtue of the said writing; because she says that the said writing is not the deed of the said Sir J. S. knight and baronet: And of this she puts herself upon the country: And the said G. does so likewise: Therefore let a jury thereupon come before our lady the queen at *Westminster*, &c. on next after and who neither, &c. to recognize, &c. The same day is given to the parties aforesaid at the same place, &c.

B. R. Debt on a bond against two executors of the obligor.
Lill. Ent. 167, 482.

Middlesex, M. P. widow, complains of J. K. esq; and N. F. gent. executors of the testament and last will of R. K. esq; otherwise called R. K. of *Corsham* in the county of *Wilts*, esq; in the custody of the marshal, &c. of a plea, that they render to her two thousand pounds of lawful money of *England* [*Great Britain*] which they unjustly detain from her; for that, to wit, That whereas the said R. in his life-time, to wit, on the twenty-fifth day of *March* in the year of our Lord one thousand six hundred and ninety, at *Westminster* in the county of *Middlesex* aforesaid, by his writing obligatory, sealed with the seal of the said R. in his life-time,

time, *And* to the court of our said lord and Proven.
 lady the now king and queen here shewn, the
 date whereof is on the same day and year,
 acknowledged himself to be held and firmly
 bound to the said *M.* in the said two thousand
 pounds, to be paid to the said *M.* when he
 should be thereunto afterwards required: *Yet Breach:*
 the said *R.* in his life-time, and the said *J.*
 and *N.* or either of them, after the death of
 the said *R.* although often required, &c. have
 not yet paid, nor has either of them paid the
 said two thousand pounds to the said *M.* but
 the said *R.* in his life-time intirely refused to
 pay the same to the said *M.* and the said *J.*
 and *N.* after the death of the said *R.* still in-
 tirely refuse to pay the same to the said *M.*
 and unjustly detain, to the damage of the said
M. of twenty pounds: And thereupon she
 brings suit, &c.

And for that the said *M. P.* cannot deny *Judgment of*
 but that the said *J.* and *N.* have not, nor on *assets in futu-*
 the day of exhibiting the bill of the said *M.* *ro.*
 or at any time afterwards had, any goods or *8 Rep. 134.*
 chattels which were of the said *R.* at the time *2 Saund. 216,*
 of his death in the hands of the said *J.* and *226.*
N. to be administered, sufficient to satisfy to *Lilly's Ent.*
 the said *M.* the said debt, the said *M.* prays *482, 505.*
 judgment, and her said debt to be adjudged *Chist's Ent.*
 to her, to be levied of the goods and chattels *352, 428.*
 which were of the said *R.* at the time of *Asten's Ent.*
 his death, and which hereafter shall come to *281.*
 the hands of the said *J.* and *N.* to be admini-
 stered: Therefore it is considered, that the
 said *M.* recover against the said *J.* and *N.* her
 said debt, to be levied of the goods and chattels

which were of the said *R.* at the time of his death, and which hereafter shall come to the hands of the said *J.* and *N.* to be administered; and the said *J.* and *N.* in mercy, &c.

B. R. Debt on
a bond by the
administrator
of the obligee.
I. ill. Ent.
164.

Profert of the
bond.

London, R. M. esq; administrator of the goods and chattels, rights and credits, which were of *A. B.* otherwise *N.* deceased, at the time of her death *who died intestate*, complains of *A. R.* of the parish of *St. Martin in the fields*, otherwise called, &c. being in the custody of the marshal, &c. of a plea, that he render to him one thousand pounds of lawful money of *Great Britain*, which he unjustly detains; for that, to wit, That whereas the said *A.* on the twenty-seventh day of *November* in the thirty-fourth year of the reign of our late sovereign lord *Charles the second*, late king of *England*, &c. [*Great Britain*] at *London* aforesaid, to wit, in the parish of *St. Sepulchre* in the ward of *Faringdon Without*, by his writing obligatory, sealed with the seal of the said *A.* and to the court of our lord the now king here shewn, the date whereof is on the day and year aforesaid, acknowledged himself to be held and firmly

* Debt by the administrator of *A.* Plea in abatement that *A.* made his will, which after administration granted, was proved by the executor. Demurrer. Judgment for the plaintiff; for the plaintiff ought to have traversed, *absque hoc*, that the said *A.* died intestate. *Pas. 7 Ann. C. B. London and Bessingham, Comyns 156. 6 Co. Heliar. Yelv. 115.*

firmly bound to the said *A.* by the name of *A. N.* of *London*, widow, in the said one thousand pounds, to be paid to the said *A.* when he should be afterwards thereto requested: Yet the said *A.* although often required, &c. has not yet paid the said one thousand pounds to the said *A.* in her lifetime, or to the said *R.* after the death of the said *A.* * (to which said *R.* after the death of the said *A.* to wit, on the thirty-first day of *January* in the year of our Lord one thousand six hundred and ninety-five, administration of the goods and chattels, rights and credits, which were of the said *A.* at the time of her death, was in due manner committed by *T.* by Divine Providence archbishop of *Canterbury*, primate of all *England*, and metropolitan, to whom the committing of that

Breach.
Administra-
tion committed.

R 2 admini-

* The plaintiff sets forth that letters of administration were committed by the official of the dean, who had a peculiar lawfully constituted, but does not shew how he was intitled, as it ought to be done in the case of a peculiar; nor does he say that the granting administration *adunc pertinuit* to the dean; therefore the defendant demurs; *sed non allocatur*, in as much as the plaintiff has set forth that administration was granted by the official of the dean, to whom of right granting of administration, &c. belonged, it is sufficient. *Mich. 8 W. 3. Truclock and —, Comyns 17. Vide Cro. Eliz. 791. Declaration of Mich. 7 W. 3. setting forth letters of administration granted 11 January, 7 W. 3. Curia: If administration be granted, and the letters of administration are lost, new letters of administration may be granted after the action commenced; but it is otherwise if they are then originally granted. Mich. 8 W. 3. B. Barton and Fuller, Comyns 18.*

Profert of the
letters of ad-
ministration.

administration of right belonged) or to either of them, but the said *A.* refused to pay the said one thousand pounds to the said *A.* in her life-time, and to the said *R.* after the death of the said *A.* and the said *A.* still refuses to pay the same to the said *R.* to the damage of the said *R.* of one hundred pounds; and thereupon he brings suit, &c. And the said *R.* brings here into court the letters of administration aforesaid, which testify the committing the said administration in form aforesaid, &c.

B. R. Debt on
several bonds
to wit,
by administra-
trix of the
obligee.

Lill. Ent. 167.

1. Bond.

Profert.

Middlesex, *E. W.* widow, administratrix of all and singular the goods and chattels, rights and credits, which were of *C. W.* her late husband, deceased, complains of *S. W.* gent. otherwise called *S. W.* of *Landreth* in the county of *Cornwall*, gent. otherwise called *S. W.* of *St. Dunstan in the West, London*, gent. being in the custody of the marshal, &c. of a plea, that he render to her ninety pounds of lawful money of *Great Britain*, which he unjustly detains; for that, to wit, That *whereas* the said *S.* on the sixteenth day of *December* in the year of our Lord one thousand six hundred and ninety, at *Westminster* in the county aforesaid, by his writing obligatory, sealed with the seal of the said *S.* and to the court of our lord the now king here shewn, the date whereof is on the same day and year, acknowledged himself to be held and firmly bound to the said *C. W.* in his life-time, in twenty pounds parcel of the said ninety pounds, to be paid to the said

C. when he should be thereunto afterwards required: *And also whereas* the said S. afterwards, to wit, on the twenty-ninth day of *September* in the year of our Lord one thousand six hundred and at *Westminster* afore said in the county afore said, by his other writing obligatory, also sealed with the seal of the said S. and to the court of our said lord the now king here also shewn, the date whereof is on the same day and year, acknowledged himself to be held and firmly bound to the said C. W. in his life-time in other twenty pounds, other parcel of the said ninety pounds, to be also paid to the said C. when he should be thereunto afterwards required: *And also whereas* the said S. afterwards, to wit, on the said twenty-ninth day of *September* in the year of our Lord last afore said, at *Westminster* afore said in the county afore said, by his other writing obligatory, also sealed with the seal of the said S. and to the court of our said lord the now king here also shewn, the date whereof is on the same day and year, acknowledged himself to be held and firmly bound to the said C. W. in his life-time in other twenty pounds, other parcel of the said ninety pounds, to be also paid to the said C. when he should be thereunto afterwards required: *And also whereas* the said S. afterwards, to wit, on the same day and year last above said, at *Westminster* afore said in the county afore said, by his other writing obligatory, also sealed with the seal of the said S. and to the court of our said lord the now king here also shewn, the date where-

2. Bond.

Profert.

3. Bond.

Profert.

4. Bond.

Profert.

g. Bond.

Profert.

Breach.

*Administration
committed to
the plaintiff.*

of is on the same day and year, acknowledged himself to be held and firmly bound to the said C. in his life-time in other twenty pounds, other parcel of the said ninety pounds, to be also paid to the said C. when he should be thereunto afterwards required: *And also where- as* the said S. on the same day, year and place last abovesaid, by his other writing obligatory, also sealed with the seal of the said S. and to the court of our said lord the now king here also shewn, the date whereof is on the same day and year, acknowledged himself to be held and firmly bound to the said C. in his life-time in ten pounds, residue of the said ninety pounds, to be also paid to the said C. when he should be thereunto afterwards required: *Yet* the said S. although often required, &c. has not paid the said ninety pounds to the said C. in his life-time, nor to the said E. after the death of the said C. (to which said E. on the day of in the year of our Lord at *Westminster* afore said in the county afore said, administration of all and singular the goods and chattels, rights and credits, which were of the said C. at the time of his death, was in due form of law committed by to whom the committing the said administration of right belonged) but the said S. intirely refused to pay the same to the said C. in his life-time, or to the said E. after the death of the said C. and still refuses to pay the same to the said E. and unjustly detains, to the damage of the said E. of forty pounds; and thereupon

thereupon she brings suit, &c. And the Profect of the brings here into court the letters of administration afore-^{letters of ad-}said, which testify the commit-^{ministration.}ting the said administration in form afore-^{ministration.}said, the date whereof is on the day and year afore-^{ministration.}said, &c.

Of Easter term in the ninth year of the reign of king George the second.

London, **B**E it remembered, that heretofore *Memorandum to wit,* (that is to say) of the term of St. *of a precedent Hilary* last past, came before our sovereign *term.* lord the king at *Westminster W. L.* and *E.* his wife, administratrix of all and singular the goods and chattels, rights and credits, which were of *J. K.* her late husband deceased, by *G. W.* their attorney, and brought here into the court of our said lord the king then there their bill against *N. G.* otherwise called *N. G.* of the island of *St. Christopher*, merchant, being in the custody of the marshal of the *Marshalsea* of our said lord the king, before the king himself, in a plea of debt; and there are pledges to prosecute, to wit, *John Doe* and *Richard Roe*; which said bill follows in these words: *London,* to wit, *W. L.* and *E.* *Debt by baron and feme, administratrix, on bond to institute.* his wife, administratrix of all and singular the goods and chattels, rights and credits which were of *J. K.* her late husband deceased, complains of *N. G.* otherwise called *N. G.* of the island of *St. Christopher*, merchant, in the custody of the marshal of the *Marshalsea* of our lord the king, being before the king himself,

Profest.

Breach.

*Administration
committed.*

himself, of a plea, that he render to them 2631 *l.* of lawful money of *Great Britain*, which he unjustly detaineth from them; for that whereas the said *N.* on the twentieth day of *January* in the seventh year of the reign of our late sovereign lord *George*, late king of *Great Britain*, &c. at *London*, (to wit) in the parish of *St. Mary le Bow* in the ward of *Cheap*, by a certain writing obligatory, sealed with the seal of him the said *N.* And now shewn to the court of our said lord the king here, bearing date the day and year last above-mentioned, did acknowledge himself to be held and firmly bound to the said *J.* in the said sum of 2631 *l.* to be paid to the said *J.* or his certain attorney, executors, administrators or assigns, whenever he should be requested so to do: *Nevertheless* the said *N.* although he by the said *J.* in his life-time, and by the said *W.* and *E.* (after the celebration of the marriage between them, and after the death of the said *J.*) was thereunto requested, hath not paid the said sum of 2631 *l.* or any part thereof, either to the said *J.* in his life-time, or to the said *W.* and *E.* or either of them, after the death of the said *J.* (to which said *E.* administration of all and singular the goods and chattels, rights and credits, which were of the said *J. K.* deceased, at the time of his death, who died intestate, by *W.* by divine providence archbishop of *Canterbury*, primate and metropolitan of all *England*, after the decease of the said *J.* at *London* aforesaid, in the parish aforesaid, on the seventh day of *November* in the year of our

our Lord one thousand seven hundred and thirty, was duly committed) but hath hitherto refused to pay to them, or either of them, the said 263*l.* and still refuseth to pay the same to the said *W.* and *E.* or either of them, in delay of the execution of the administration of the goods and chattels, rights and credits of the said *J.* whereupon they the said *W.* and *E.* say they are injured, and have damage to the amount of 20*l.* And therefore they bring their suit, &c. And the said *W.* and *E.* bring here into court the letters Profert of letters of administration. administratory afore said of the said archbishop, which are dated the day and year above said, by which it may sufficiently appear, that the said *E.* hath the administration of all and singular the goods and chattels, rights and credits which belonged to the said *J.* at the time of his death, committed to her in form afore said.

And now at this day, that is to say, *Wednesday* next after fifteen days from the feast of *Easter* in this same term, until which day the said *N.* had leave to imparl to the said bill, and then to answer the same as he should be advised, before our sovereign lord the king at *Westminster*, came as well the said *W.* and *E.* by their said attorney, as the said *N.* by *A. S.* his attorney; and the said *N.* defends the force and injury when, &c. and craves Oyer of obligation. oyer of the said writing obligatory; and it is read to him in these words; that is to say, Know all men by these presents, that I *N. G.* of the island of *St. Christopher*, merchant, am held and firmly bound unto *J. K.* of *London*,

Oyer of condi-
tion,

Plea of pay-
ment pursuant
to the statute.

don, merchant, in the sum of two thousand six hundred and thirty-one pounds of good and lawful money of *Great Britain*, to be paid to the said J. K. his certain attorney, executors, administrators or assigns, to which payment well and truly to be made and done, I bind myself, my heirs, executors and administrators, firmly by these presents, sealed with my seal, dated the twentieth day of *January* in the seventh year of the reign of our sovereign lord *George*, by the grace of God king of *Great Britain, France and Ireland*, defender of the faith, &c. *Anno Dom. 1720.* And he likewise craves oyer of the condition of the said writing obligatory, which is read to him in these words; that is to say, The condition of this obligation is such, that if the above bounden *N. G.* his heirs, executors or administrators, shall and do well and truly pay, or cause to be paid, unto the above-named J. K. his executors, administrators or assigns, the full sum of one thousand three hundred and fifteen pounds eleven shillings and six pence of good and lawful money of *Great Britain*, at or before the first day of *September* next ensuing the date hereof, without fraud or further delay, then this obligation to be void and of none effect, or else to be and remain in full force and virtue: Which being read and heard, the said *N.* saith, That the said *W.* and *E.* ought not to have or maintain their said action thereof against him the said *N.* because he saith, that after the making of the said writing obligatory, and after the said first day of *September* mentioned in the said condition,

condition, and before the day of the exhibiting of the bill of them the said *W.* and *E.* that is to say, on the eighteenth day of *January* in the year of our Lord one thousand seven hundred and thirty-five at *London* aforesaid, that is to say, in the said parish of *St. Mary le Bow* in the said ward of *Cheap*, he the said *N.* paid to them the said *W.* and *E.* as administratrix as aforesaid, the said sum of one thousand three hundred and fifteen pounds eleven shillings and six-pence, contained in the said condition according to the form and effect of the statute in such case made and provided, together with all interest then due thereon: And this he is ready to verify: Wherefore he prays judgment whether the said *W.* and *E.* ought to have or maintain their said action thereof against him the said *N.* &c.

And the said *W.* and *E.* say, That they, *Replication.*
for any thing above alledged by the said *N.* in his said plea, ought not to be barred from having their said action against him, because they say that the said *N.* hath not paid to them the said *W.* and *E.* the said sum of one thousand three hundred and fifteen pounds eleven shillings and six pence with all interest thereon due, in such manner and form as the said *N.* hath above alledged in his said plea: And this they pray may be inquired of by the country: And the said *N.* doth so likewise: *Issue.*
Therefore let the jurors come before our lord the king at *Westminster* on *Venire facias*
next after *awarded.*

who are in no wise
related to the said *W.* and *E.* or to the said
N.

N. to make a certain jury of the country between the said parties of the plea aforesaid, to recognize upon their oaths of the whole truth of and concerning the premisses, because as well the said *N.* as the said *W.* and *E.* between whom the matter in variance is, have put themselves upon that jury. The same day is given to the said parties there, &c.

B. R. Debt on *a bond by an administrator of the obligee durante minori ætate, &c. (where there had been a former administrator durante minori ætate) against the executrix of the obligor.*
 Lill Ent. 177.
 Salk. 37 to 40.
 1 Pract. Reg.
 37, 43.

London, T. B. administrator of all and singular the goods and chattels, rights and credits, which were of *D. K.* deceased, at the time of his death, * during the infancy of *H. K.* *J. K.* and *D. K.* legitimate † children of the said *D. K.* complains of *E. K.* widow, executrix of the testament and last will of *J. K.* her late husband deceased, otherwise called *J. K.* citizen and vintner of *London*, being in the custody of the marshal, &c. of a plea, that she render to him four hundred pounds of lawful money of *England* [*Great Britain*] which she unjustly detains from him; for that, to wit, That whereas the

* In an action brought by an administrator *durante minori ætate* of an executor, he ought to aver the executor to be within the age of seventeen. *Hob.* 251. *Cra. Jac.* 590. 2 *Rol. Rep.* 186, 204, 209, 466. 2 *Sid.* 60. *Yelv.* 128. If an action be brought against such administrator, this averment is not necessary. Authorities *supra.* *Rol. Rep.* 400; et vide *Vaugb.* 93. 3 *Dan. Ab.* 356. p. 6, 7.

† An administration, during the minority of one not made executor, does not cease 'till the party is of full age. 5 *Mod.* 395. *Salk.* 39; fed vide 2 *Jon.* 48.

the said J. in his life-time, to wit, on the twentieth day of *January* in the thirty-sixth year of the reign of his late majesty *Charles* the second late king of *England* [*Great Britain*] &c. at *London* aforesaid, to wit, in the parish of *St. Mary le Bow* in the ward of *Cheap*, by his writing obligatory, sealed with the seal of the said J. in his life-time, *And* *Profert.* to the court of our said lady the now queen here shewn, the date whereof is on the same day and year, acknowledged himself to be held and firmly bound to the said *D. K.* in his life-time in the said four hundred pounds, to be paid to the said *D.* his executors or administrators, when he should be thereunto afterwards required: *Yet* the said J. in his *Breach.* life-time, or the said *E.* after the death of the said J. although often required, &c. have not yet paid nor has either of them paid the said four hundred pounds to the said *D.* in his life-time, or to one *D. B.* now deceased, *Former administrator durante minori ætate.* late administrator of all and singular the goods and chattels, rights and credits, which were of the said *D.* at the time of his death, during the infancy of the said *H. J.* and *D.* or to the said *T.* after the several deaths of the said *D.* and *D.* or to either of them, (to which said *T.* after the death of the said *D.* to wit, on the *Administration granted to plaintiff.* fifteenth day of *November* in the year of our Lord one thousand seven hundred, at *London* aforesaid, in the parish and ward aforesaid, administration of all and singular the goods and chattels, rights and credits, which were of the said *D.* at the time of his death, during the infancy of the said *H. J.* and *D.* after the death

*Profert of the
letters of ad-
ministration.*

death of the said *D.* the letters of administration of the goods of the said *D.* deceased, before granted to the said *D.* to the use and during the infancy of the said infants, being ceased and expired by reason of the death of the said *D.* was in due manner committed by *T.* by divine providence archbishop of *Canterbury*, primate of all *England*, and metropolitan) but intirely refused to pay the same to the said *D.* in his life-time, and to the said *D.* in his life-time, and to the said *T.* after the death of the said *D.* and *D.* and the said *E.* still refuses to pay the same to the said *T.* and unjustly detains, to the damage of the said *T.* of ninety pounds: And thereupon he brings suit, &c. And the said *T.* brings here into court the letters administratory of the said archbishop, which testify the committing the said administration to the said *T.* after the death of the said *D.* in form aforesaid, &c.

B. R. Debt on London, W. T. administrator of the goods and a bond by the so wit, W. K. chattels which were of W. K. un- administrator de bonis non administered by A. T. otherwise K. deceased, administratis late executrix of the testament of the said W. K. complains of J. D. and E. his wife, by a late executrix of the otherwise lately called the right honourable obligee against E. V. viscountess Purbeck Deffring in the county of Norfolk, widow, being in the custody of the marshal, &c. of a plea, that they render feme, the bond being entered to him one hundred and forty pounds, which into by the they unjustly detain; for that, to wit, That feme when she was sole. whereas the said E. whilst she was sole, to Lill. Ent. 166. Ca. in Parl. wit, on the twentieth day of October in the 15. twenty-

twenty-seventh year of the reign of his late majesty *Charles* the second, late king of *England* [*Great Britain*] &c. at *London*, to wit, at the parish of *St. Mary le Bow* in the ward of *Cheap*, by her writing obligatory, sealed with the seal of the said *E.* And to the court of our lord and lady the now king and queen here shewn, the date whereof is on the same day and year, acknowledged herself to be held and firmly bound to the said *W. K.* in his life-time in the said one hundred and forty pounds, to be paid to the said *W. K.* his executors, administrators and assigns, when she should be thereto required: Yet the said *E.* whilst she was sole, although often required, &c. has not paid the said one hundred and forty pounds to the said *W. K.* in his life-time, or to the said *A.* after the death of the said *W. K.* whilst she was sole; and the said *J.* and *E.* after the marriage between them was celebrated, have not paid the same to the said *A.* whilst she was sole, or to the said *A.* and *W. T.* after the marriage between them was celebrated, or to the said *W. T.* after the death of the said *A.* (to which said *W. T.* on the second day of *December* in the year of our Lord one thousand six hundred and ninety-two, at *London* aforesaid, in the parish and ward aforesaid, administration of all and singular the goods and chattels which were of the said *W. K.* at the time of his death not administered by the said *A.* was in due manner committed by *J.* by divine providence archbishop of *Canterbury*, primate of all *England*, and metropolitan) but the said *E.* whilst she was sole

Profert of the
bond.

Breach.

Administra-
tion de bonis
non committed
to the plaintiff.

sole refused to pay the same to the said *W. K.* in his life-time, or to the said *A.* after the death of the said *W. K.* whilst she was sole; and the said *J.* and *E.* after the marriage celebrated between them as aforesaid, refused to pay the same to the said *A.* whilst she was sole, or to the said *W. T.* and *A.* after marriage between them was also celebrated as aforesaid, and yet refuse to pay the same to the said *W. T.* after the death of the said *A.* and after the committing the administration aforesaid in form aforesaid, and unjustly detain in delay of the faithful administration aforesaid, to the damage of the said *W. T.* of twenty pounds: And thereupon he brings suit, &c. And he brings here into court the letters of administration of the said archbishop, which testify the committing the said administration aforesaid, in form aforesaid, &c.

Profert of the letters of administration.

B. R. Debt on a bond by an administrator de bonis non administratis by a late administrator of the obligee. *Lill. Ent. 187.* *Middlesex, E. B.* widow, administratrix of *to wit,* *E.* all and singular the goods and chattels, rights and credits, which were of *J. G.* gent. deceased, unadministered by *J. B.* also deceased, late administrator of the said *J. G.* complains of *J. B.* esq; otherwise called *J. B.* of the parish of *St. James* within the liberty of *Westminster*, in the county of *Middlesex*, &c. being in the custody of the marshal, &c. of a plea, that he render to her three hundred pounds of lawful money of *Great Britain*, which he unjustly detains from her, for that, to wit, That whereas the said *J. B.* on the fifth day of *May* in the year of our

our Lord one thousand seven hundred and fifteen, at *Westminster* in the county of *Middlesex*, by his writing obligatory, sealed with the seal of the said *J.* And to the court of our said lord the now king here shewn, the date whereof is on the same day and year, acknowledged himself to be held and firmly bound to the said *J. G.* in his life-time in the said three hundred pounds, to be paid *J. G.* when he should be thereto required: *Yet* the said *J. B.* although often required, &c. did not pay the said three hundred pounds to the said *J. G.* in his life-time, or to the said *J. B.* in his life-time, after the death of the said *J. G.* or to either of them; neither has he paid the same to the said *E.* since the death of the said *J. B.* (to which said *E.* after the several deaths of the said *J. G.* and *J. B.* to wit, on, &c. at, &c. administration of all and singular the goods and chattels, rights and credits which were of the said *J. G.* at the time of his death not administered by *J. B.* was in due form of law committed by *W.* by divine providence archbishop of *Canterbury*, primate of all *England*, and metropolitan) but he intirely refused to pay the same to the said *J. G.* in his life-time, or to the said *J. B.* in his life-time, or to the said *E.* after the death of the said *J. B.* and still refuses to pay the same to the said *E.* and unjustly detains, to the damage of the said *E.* of twenty-pounds: And thereupon she brings suit, &c. And the said *E. B.* brings here into court the said letters of administration which testify the committing the said admi-

Profert of the bond.

Breach.

*Administra-
tion granted to
the plaintiff.*

*Profert of the
letters of ad-
ministration.*

nistratation in form aforesaid, the date whereof is on the day and year abovesaid.

B. R. *Debt on a bond by the executor of the obligee against the heir at law of the obligor.* *Lill. Ent. 147.* *Surrey, S. Q.* executor of the testament and last will of *P. Q.* deceased, complains of *W. D.* heir of *J. D.* deceased, to wit, brother and heir of *R. D.* son and heir of *W. D.* brother and heir of the said *J. D.* late of *Hafcombe* in the county of *Surrey*, yeoman, deceased, being in the custody of the marshal of the *Marshalsea* of our lord the king, before the king himself, of a plea, that he render to him one hundred and twenty pounds of lawful money of *England* [*Great Britain*] which he unjustly detains; for this, to wit, That whereas the said *J.* (whose heir the said *W. D.* the present defendant now is) in his life-time, to wit, on the twenty-third day of *October* in the twenty-ninth year of the reign of our sovereign lord *Charles* the second, now king of *England* [*Great Britain*] &c. at *Hafcombe* in the county of *Surrey* aforesaid, by his writing obligatory, sealed with the seal of the said *J.* and to the court of our lord the now king here shewn, the date whereof is on the same day and year, acknowledged himself to be held and firmly bound to the said *P.* in his life-time in the said one hundred and twenty pounds, to be paid to the said *P.* his executors or administrators, when he should be thereunto afterwards required, and to the said payment well and faithfully to be made, the said *J.* in his life-time bound himself and his heirs by the said writing: Yet the said *J.* in his life-time, nor the said *W.* brother of the

Proferet.

Breach.

the said *Y.* after the decease of the said *Y.* nor the said *R.* after the death of the said *W.* brother of the said *Y.* nor the said *W. D.* the present defendant, after the death of the said *R.* although often required, &c. have not yet paid, nor has either of them paid the said one hundred and twenty pounds to the said *P.* in his life-time, or to the said *S.* after the death of the said *P.* but intirely refused to pay the same to the said *P.* in his life-time, and to the said *S.* after the death of the said *P.* And the said *W. D.* the present defendant, still refuses to pay the same to the said *S.* and unjustly detains in delay of the faithful execution of the said testament, and to the damage of the said *S.* of fifty pounds; and thereupon he brings suit, &c. And the said *S.* brings here into court the said letters testamentary of the said *P.* whereby it sufficiently appears to the court of our said lord the now king here, that the said *S.* is executor of the said testament of the said *P.* and has the administration thereof, &c. *Profert of the letters testamentary.*

And now at this day, to wit, Tuesday next after the octave of St. Hilary in this same term, to which day the said *W. D.* the present defendant had leave to imparle to the said bill, and then to answer, &c. before our lord the king at Westminster, came as well the said *S.* by his attorney aforesaid, as the said *W. D.* the present defendant, by *C. S.* his attorney; and the said *W. D.* the present defendant comes and defends the force and injury, when, &c. and says, that he, by virtue of the said writing obligatory, ought not to be charged *Plea, riens per discent tempore exhibitionis billæ.*

with the said debt as heir of the said *J. D.* because protesting that that writing is not the deed of the said *J. D.* for plea the said *W. D.* the present defendant says, that he has not lands or tenements, by hereditary descent of the said *J. D.* in fee-simple, nor had he on the said day of exhibiting the said bill, nor at any time afterwards; and this he is ready to verify: Wherefore he prays, if he as heir of the said *J. D.* ought to be charged with the said debt by virtue of the said writing.

Replication,
qu' il' ad af-
fects.

And the said *S.* says, that notwithstanding any thing by the said *W. D.* the present defendant above by pleading alledged, he the said *W. D.* the present defendant as heir of the said *J. D.* ought to be charged with the said debt by virtue of the said writing obligatory, because he says, that on * *Monday* next after three weeks of *St. Michael* in the thirty-fourth year of the reign of our sovereign lord *Charles* the second, now king of *England* [*Great Britain*] on which day the said bill was exhibited in the court here as aforesaid, the said *W. D.* the present defendant had divers lands and tenements by hereditary descent from the said *W. D.* in fee-simple, from whence he could have satisfied the said *S.* of the debt aforesaid, to wit, at *Hasecombe* aforesaid in the county aforesaid; and he prays that this may be inquired of by the country. And the said *W. D.* the present defendant does so likewise, &c.

Issue.

Venire a-
warded.

Therefore let a jury thereupon come before our lord

lord the king at *Westminster*, on *Thursday* next after the morrow of the purification of the blessed virgin *Mary*; and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid at the same place, &c.

London, **D.** *H.* merchant-taylor, complains to wit, of Sir *T. L.* bart. son and heir of *W. L.* esq; lately deceased, otherwise called *W. L.* of *Thorpe* in the county of *Surrey*, esq; being in the custody of the marshal, &c. of a plea, that he render to him three hundred pounds of lawful money of *England* [*Great Britain*] &c. which he owes him and unjustly detains, for that, to wit, That whereas the said *W.* in his life-time, to wit, on the ninth day of *May* in the year of our Lord one thousand six hundred and forty, at *London*, to wit, in the parish of *St. Mary le Bow* in the ward of *Cheap*, by his writing obligatory, sealed with the seal of the said *W.* in his life-time, and to the court of our said lord the king now here shewn, the date whereof is on the same day and year, acknowledged himself to be held and firmly bound to the said *D.* in the said three hundred pounds, to be paid to the said *D.* when he should be thereunto required; and to the said payment well and faithfully to be made the said *W.* in his life-time bound himself and his heirs by the said writing: Yet the said *W. L.* in his life-time, and the said Sir *T.* after the death of the said *W.* although often required, &c. have not yet paid, nor has either of them

B. R. Debt on a bond against the heir of the obligor.

Lill. Ent. 180. Pract. Reg. 18.

Profert.

Breach.

paid the said three hundred pounds to the said *D.* but the said *W.* in his life-time, and the said Sir *T.* after the death of the said *W.* intirely refused to pay him the same; and the said Sir *T.* still refuses to pay him the same, to the damage of the said *D.* of twenty pounds; and thereupon he brings suit, &c.

Cognovit actionem.

And the said *T.* by *G. B.* his attorney, comes and defends the force and injury, when, &c. and says, that he cannot deny the said action of the said *D.* nor but that the said writing is the said deed of the said *W.* his father, nor but that he detains from the said *D.* the said three hundred pounds, in the form in which the said *D.* has above declared

Sed riens per discent.

against him: Yet the said *T.* says, that he has not any lands or tenements by hereditary descent from the said *W.* his father in fee-simple, nor had on the day of exhibiting the said bill of the said *D.* nor at any time afterwards,

Except four mesuages, &c. 8 Rep. 134.

Except four mesuages and seventeen acres and two roods of land, with the appurtenances in *Thorpe* and *Puttenham* in the county of *Surrey*, of the yearly value of one hundred pounds, and one mesuage with the appurtenances in *East Witbam* in the county of *Kent*, of the yearly value of forty shillings: And except the

And the reversion of, &c.

reversion of the manor of *Hall Place* with the appurtenances, and of five mesuages, six cottages, two dove-houses, three gardens, three orchards, six hundred and fifty acres of land, two hundred acres of meadow, five hundred acres of pasture, one hundred acres of wood, three hundred acres of furze and heath, two hundred acres of moor, and fifty shillings

rent,

rent, with the appurtenances in *Thorpe, Chertsey* and *Egham* in the said county of *Surrey*, and of the rectory of *Thorpe* with the appurtenances, and of one mesuage, one dovehouse, one hundred acres of land, fifty acres of meadow, one hundred acres of pasture, twenty acres of wood, and fifty acres of furze and heath, with the appurtenances in *Puttenham, Elsted, Seale* and *Tongham* in the said county of *Surrey*, which said manor, rectory, tenements and moiety, with the appurtenances, Sir *J. L.* bart. and *E.* his wife, who was the wife of the said *W.* hold for the term of the life of the said *E.* in right of the said *E.* of no value during the life of the said *E.* and after the death of the said *E.* of the yearly value of five hundred pounds :

And except the reversion of the manor of *Stains*, *And the reversion, &c.* with the appurtenances, and of one cottage, one parcel of land, containing eight and twenty feet in breadth, and eighty-three feet in length, and of another parcel in breadth twenty-four feet, with the appurtenances in *Stains* in the county of *Middlesex*, and of one mesuage and sixteen acres of land, with the appurtenances in *Addington* in the said county of *Surrey*, and of the yearly rent of eleven pounds issuing out of one mill, one mesuage, and two acres of meadow in *Stains* aforesaid in the said county of *Middlesex*, and of the fair and markets to be held in *Stains* aforesaid, and of the chief pension of two shillings issuing out of the vicarage of *Stains* aforesaid, after the expiration of ninety-nine years, commencing from the seventeenth day

Pet' judic' fi,
&c.

of *May* in the year of our Lord one thousand six hundred and thirty-six, granted thereof to one *W. D.* esq; by the said *W.* in his life-time, under the yearly rent of a pepper-corn, by certain indentures made at *Stains* aforesaid on the same seventeenth day of *May* in the year of our Lord one thousand six hundred and thirty-six aforesaid, between the said *W.* of the one part, and the said *W. D.* of the other part, bearing date the same day and year; and this he is ready to verify: *Wherefore* he prays judgment, if he, as son and heir of the said *W.* ought to be charged with the said debt by virtue of the said writing, except in the said four mesuages and seventeen acres and two roods of land, with the appurtenances, in *Thorpe* and *Puttenham* aforesaid, and in the said mesuage with the appurtenances in *East Wickham* aforesaid, and except in the said several reversions when they shall happen, &c. with this, that he the said Sir *T. L.* will verify that the said *E.* is still in being, and alive, to wit, at *London* aforesaid, in the parish and ward aforesaid.

Plaintiff prays
judgment.

And the said *D.* for that the said Sir *T.* does not deny the said action of the said *D.* nor but that the said writing is the deed of the said *W.* nor but that the said Sir *T.* detains from the said *D.* the said three hundred pounds in the form in which the said *D.* has above thereof declared against him, prays judgment and his said debt, together with his damages by the occasion of the detaining that debt, to be adjudged to him, to be levied of the said four mesuages, &c. and of the said several

several reversions, with the appurtenances, when they shall happen, &c. *It is therefore* Judgment of the tenements confessed, and of the reversions quando acciderint. considered, that the said D. recover against the said Sir T. his said debt, and also his damages by the occasion of the detaining that debt to fifty shillings, adjudged to the said D. by his assent, to be levied of the said four mesuages and seventeen acres, and two roods of land with the appurtenances in *Tborpe* and *Puttenbam* aforesaid; and of the said mesuage with the appurtenances in *East Wickam* aforesaid; and of the said several reversions when they shall happen; and the said Sir T. in mercy, &c.

Middlesex, SIR J. R. knt. and E. his wife, B. R. Debt on to wit, executrix of the testament and a bond by last will of J. L. H. esq; deceased, common and feme, plain of G. P. son and heir of S. P. widow, executrix of the obligee, deceased, who was heir and devisee of W. W. against the heir of the Inner Temple esq; being in the custody of the marshal of the Marshalsea of our lord the king, before the king himself, of a plea, that he render to them four hundred pounds of lawful money of Great Britain, which he unjustly detains from them; for that, to wit, That whereas the said W. in his life-time, to wit, on the twenty-seventh day of February in the year of our Lord one thousand six hundred and eighty-one, at the parish of St. Clement Danes in the county of Middlesex aforesaid, by his writing obligatory, sealed with the seal of the said W. And to the court of our said lord the now king here shewn, the date whereof is on the same day Bond made in 1681. and sued in 1718. Lill. Ent. 172. Profect of the bond. and

Breach.

and year, acknowledged himself to be bound to the said *J. L. H.* in his life-time in the said four hundred pounds, to be paid to the said *J.* when he should be thereunto required, and to the said payment to be well and faithfully made, the said *W.* bound himself and his heirs by the said writing: *Yet* the said *W.* in his life-time, and the said *S.* who was heir and devisee of the said *W.* after his death, and the said *G.* son and heir of the said *S.* after the death of the said *S.* although often required, &c. have not yet paid, nor has any one of them paid the said four hundred pounds to the said *J.* in his life-time, or to the said *I.* and *E.* after the death of the said *J.* or to any one of them, but have intirely refused to pay the same to them, or to any one of them; and the said *G.* still refuses to pay the same to the said *I.* and *E.* and unjustly detains, to the damage of the said *I.* and *E.* of ten pounds: And thereupon they bring suit, &c. And the said *I.* and *E.* bring here into court the letters testamentary of the said *J.* by which it plainly appears to the court here, that the said *E.* is executrix of the testament and last will of the said *J.* And thereof has administration, &c.

*Profert of the probate.**Oyer.**Condition of the bond.*

When, &c. and he prays oyer of the said writing obligatory, and it is read to him, &c. and he also prays oyer of the condition of the said writing, and it is read to him in these words, to wit, The condition of this obligation is such, that if the above bounden *W. W.* and *P. H.* or either of them, their or either of their heirs, executors or administrators, do

do well and truly pay or cause to be paid unto the above named *J. L. H.* his executors, administrators or assigns, the full sum of two hundred and twelve pounds of good and lawful money of *England*, on the first day of *March* which shall be in the year of our Lord one thousand six hundred and eighty-two, then this obligation to be void, or else to remain in full force: Which being read and heard the said *G.* says, that the said *I.* and *E.* ought not to have or maintain the said action thereupon against him, because he says that the said *W. W.* in his life-time, after the said first day of *March* in the said condition mentioned, and before the exhibiting the said bill, to wit, *on the twenty-seventh day of February* in the year of our Lord one thousand six hundred and ninety-two, paid to the said *J. L. H.* the said two hundred pounds, being the principal sum due to the said *J. L. H.* by the condition of the said writing, together with all interest for the said two hundred pounds then due, to wit, at the said parish of *St. Clement Danes* in the county of *Middlesex* aforesaid: And this he is ready to verify: Wherefore he prays judgment if the said *I.* and *E.* ought to have or maintain their action thereupon against him, &c.

Plea, that obligor paid the money at a future day, ante exhibitionem billæ.

Naught as it ties down the evidence to that day.

And the said *I.* and *E.* say, That they, by any thing before alledged, ought not to be barred from having their said action against the said *G.* because they say that the said *W. W.* in his life-time, after the said first day of *March* in the said condition mentioned, and before the exhibiting the said bill, did not pay to the

Replication, that the obligor did not pay, &c.

the

Issue.
Venire
awarded.

the said *J. L. H.* the said two hundred pounds and interest due for the same, as the said *G.* has above by pleading alledged: And this they pray may be inquired of by the country: And the said *G.* likewise, &c. Therefore let a jury thereupon come before our lord the king at *Westminster* on next after and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the said parties aforesaid at the same place, &c.

Verdict for the plaintiffs, *Mich. 5 Geo. 1.*

Hilary term in the eighth year of king William the third.

Roll 698.

B. R. Declaration in debt on a bill penal, payable at several times by the obligee against baron and feme, administratrix of the obligor. *Lill. Ent. 158. Vide 2 R. Raym. 1510. 3 D. A. 381. p. 6. 2 Vent. 84. 1 Sid. 228.* *London, N. A.* complains of *J. S. gent.* and to wit, *N. M.* his wife, administratrix of all and singular the goods and chattels, rights and credits, which were of *W. F.* lately deceased, who died intestate, as it is said, otherwise lately called *W. F.* citizen and merchant-taylor of *London*, in the custody of the marshal, &c. of a plea, that they render to him thirty pounds of lawful money of *England*, which they unjustly detain from him; for that, to wit, That whereas the said *W. F.* in his life-time, to wit, on the twenty-ninth day of *September* in the year of our Lord one thousand six hundred and ninety-four, at *London* aforesaid, to wit, in the parish of *St. Mary le Bow* in the ward of *Cheap*, by his bill obligatory,

obligatory, sealed with the seal of the said *W.* in his life-time, And to the court of our said Proser. lord the present king here shewn, the date whereof is on the same day and year, acknowledged himself to be indebted to the said *N.* in the sum of fifteen pounds ten shillings and six-pence of lawful money of *England*, to be paid to the said *N.* his executors, administrators or assigns, in manner following, to wit, the sum of five pounds, part thereof, on the twenty-ninth day of *October* then next ensuing the date of the said bill obligatory, and the sum of five pounds, further part thereof, on the twenty-ninth day of *November* then next ensuing, and the sum of five pounds ten shillings and six pence the residue in full thereof, on the twenty-fourth day of *December* then next ensuing the date of the said bill obligatory; and for the true payment thereof the said *W. F.* by the said bill firmly bound himself, his heirs, executors and administrators in the said sum of thirty pounds; and the said *N.* in fact says, that the said *W. F.* in his life-time, or the said *J.* and *M.* after the death of the said *W.* did not, nor did either of them, pay to the said *N.* on the said twenty-ninth day of *October* in the said bill above specified the said sum of five pounds, which upon that day they ought to have paid him according to the form and effect of the said bill obligatory, whereby an action accrued to the said *N.* to demand and have of the said *W.* in his life-time, and of the said *J.* and *M.* after the death of the said *W.* the said thirty pounds;

Ter

Breach.

Yet the said *W.* in his life-time, and the said *J.* and *M.* after the death of the said *W.* although often required, &c. have not paid, nor has either of them paid, the said thirty pounds to the said *N.* but the said *J.* and *M.* still refuse to pay the same to the said *N.* and unjustly detain the same from him, to the damage of the said *N.* of twenty pounds; And thereupon he brings suit, &c.

Plea, a judgment in C. B. recovered against the intestate in debt sur mutuatus.
1 R. Raym.
 263.
Salk. 298.
Carth. 449.
Comb. 444.
 449.

And the said *J.* and *M.* &c. and say, that the said *N.* ought not to have or maintain his said action thereupon against them, because they say, that the said *W. F.* in his life-time, to wit, on the first day of *July* in the fifth year of the reign of our lord the present king and lady the late queen, at *London*, to wit, in the parish and ward aforesaid, borrowed of one *R. W.* gent. one hundred pounds, to be paid to the said *R.* when he the said *W.* should be thereto required; whereby the said *R.* for recovery of the said debt, to wit, in the term of *St. Michael* in the said fifth year of the reign of our said lord the present king and lady the late queen, in the court of our said lord the king and lady the queen, at *Westminster* in the county of *Middlesex*, impleaded the said *W. F.* in his life-time, in a plea of debt for the said one hundred pounds, in which said plea it was in such manner proceeded in the said court of our said lord the king and lady the late queen of the bench, that the said *R.* in the said term of *St. Michael* in the fifth year aforesaid, by the judgment of the said court, recovered against the said *W. F.* in his life-time as well the said debt of one

one hundred pounds, as thirty shillings for his damages which he had, by occasion of the detaining of that debt, by the said court of our said lord the present king and said lady the late queen of the bench adjudged to the said R. by his assent, as by the record and proceedings thereof remaining in the court of our said lord the present king of the bench plainly appears; And the said J. and M. further say, that the said W. F. in his life-time, to wit, on the twentieth day of *March* in the fourth year of the reign of our said lord the present king and lady the late queen of *England, &c.* *A judgment against defendant for a debt on bond due by interest.* at *London* aforesaid, in the parish and ward aforesaid, by his writing obligatory,* acknowledged himself to be bound to one G. E. in one hundred pounds, to be paid to the said G. when he the said W. F. should be thereto required; And that after the death of the said W. F. the said one hundred pounds being no ways paid or satisfied, the said G. for recovery of his said debt after the death of the said W. F. to wit, in the term of *St. Michael* in the sixth year of the reign of our said lord the now king and lady the late queen, in the said court of our lord the now king and lady

* If an executor in pleading a judgment only shews how the plaintiff had declared against him *pro eo quod cum testator per scriptum suum, &c.* and that he thereupon confessed the action, this plea is good, though not therein directly alledged, that the testator was bound in the said bond. *Robinson and Corbet, 1 Lutw. 662. Vide 1 Sid. 230. 1 Keb. 808. Cro. Eliz. 462.*

lady the late queen of the bench at *Westminster* aforesaid, impleaded the said *J.* and *M.* as administratrix of the goods and chattels of the said *W. F.* in a plea of debt for the said one hundred pounds of and upon the said writing obligatory, in which said plea it was in such manner proceeded, that the said *G.* in the same term of *St. Michael* in the sixth year aforesaid, by the judgment of the said court of our said lord the present king and lady the late queen of the bench, recovered against the said *J.* and *M.* the said one hundred pounds, and his damages by the occasion of the detaining that debt, to forty shillings, by the said court adjudged to the said *G.* by his assent, to be levied of the goods and chattels which were of the said *W. F.* at the time of his death in the hands of the said *J.* and *M.* to be administered, if they had so much thereof in their hands to be administered; and if they had not so much in their hands, then the said damages to be levied of the proper goods and chattels of the said *J.* and *M.* as by the said record and proceedings remaining in the said court of our lord the present king of the bench at *Westminster* more fully appears; And the said *J.* and *M.* further say, that they have fully administered all the goods and chattels which were of the said *W. F.* at the time of his death in their hands to be administered; and that they have not, nor on the day of exhibiting the said bill of the said *N.* or at any time afterwards, had any goods or chattels which were of the said *W. F.* at the time of his death in their hands

Plene administravit.

Have no goods except to the value of 10 l.

to be administered, except goods and chattels to the value of ten pounds, which are not *Which are liable to the* sufficient to satisfy the several judgments given in form aforesaid, and which are bound *judgments.* and liable to the execution and satisfaction thereof, with this, that they the said *J.* and *M.* will verify that the said several debts, in *Averment,* the said several judgments as aforesaid recovered, were and still are true and just debts, *That the said debts are just debts.* and no ways paid; and that the said several judgments are in their full force and vigour no ways annulled, reversed or satisfied; and that *The judgments in force;* the said *W. F.* and the said *J.* and *M.* in the said several judgments respectively named, *And the persons the same;* and the said *W. F.* and the said *J.* and *M.* named in the bill of the said *N.* are the same persons, and not other or different: And this they are ready to verify: Wherefore they pray judgment if the said *N.* ought to have or maintain his said action thereupon against them, &c.

N. Hooper.

And the said *N.* says that he, by any thing *Replication;* by the said *J. S.* and *M.* his wife by pleading alledged, ought not to be barred from having said action thereupon against them; because *As to one judgment, that only 30 l. was due.* as to the said judgment obtained against the said *J. S.* and *M.* as aforesaid, in the said plea mentioned, the said *N.* says; that thirty pounds only and not more of the said money by the said *G. E.* against the said *J.* and *M.* in form aforesaid were justly and truly due to the said *G.* and that after the giving *Which is paid;*

And the judgment kept on foot per fraudem.

As to another judgment, only 28l. was due;

Which the plaintiff there in is ready to accept in full satisfaction;

the said judgment, to wit, on the first day of *March* in the seventh year of the reign of our said lord the present king, at the parish and ward aforesaid, the said *J.* and *M.* paid to the said *G. E.* the said thirty pounds in full satisfaction and discharge of the judgment; and the said *G.* then and there received and accepted the said thirty pounds of the said *J.* and *M.* in full satisfaction and discharge of that judgment, and of all the money thereby recovered: Yet the said *J.* and *M.* fraudulently and deceitfully, and with intention to deceive and defraud the said *N.* of his said debt, have still permitted the said judgment, so as aforesaid obtained against them by the said *G.* to remain and be in its full strength and force, to wit, at the parish and ward aforesaid: And this he is ready to verify: Wherefore he prays judgment, and his said debt, together with his damages by occasion of the detaining that debt, to be adjudged, to him, &c. And as to the said judgment by the said *H. C.* obtained against the said *J.* and *M.* as aforesaid in the said plea abovementioned, the said *N.* says, that twenty and eight pounds only and not more of the money aforesaid, by the said *H. C.* recovered against the said *J.* and *M.* in form aforesaid, were justly and truly due to the said *H.* at the time of giving the said judgment; and that from the time of giving the said judgment hitherto the said *H. C.* was always ready and still is ready to receive and accept of the said *J.* and *M.* the said twenty and eight pounds, in full satisfaction and discharge of the

the said last mentioned judgment, and of all the money thereby recovered, to wit, at the parish and ward aforesaid: *Yet* the said *J.* and *M.* have hitherto deceitfully delayed the payment of the said twenty and eight pounds to the said *H. C.* and have permitted the said last mentioned judgment still to be and remain in its full force and strength with intent to defraud and deceive the said *N.* of his said debt, to wit, at the parish and ward aforesaid: And this he is ready to verify; Wherefore he prays judgment and his said debt, together with his damages by occasion of the detaining that debt, to be adjudged to him, &c. *And* the said *N.* further says, that the said *J.* and *M.* on the day of exhibiting this bill of the said *N.* had divers goods and chattels which were of the said *W. F.* at the time of his death in their hands to be administered, to the value of the debt of the said *N.* above demanded, besides goods and chattels sufficient to satisfy the said *R. W.* and *N. A.* of their several debts and damages aforesaid recovered against the said *J. S.* and *M.* his wife as aforesaid, and also twenty and eight pounds due as aforesaid to the said *H. C.* whereof they could have satisfied the said *N.* of his said debt, to wit, at the parish and ward aforesaid; and this he prays may be inquired of by the country, &c.

But defendants have delayed payment;

And keep the judgment on foot per fraudem.

That defendants have assets ultra sufficient to pay plaintiff.

And the said *J.* and *M.* say, that the said plea by the said *N.* above in manner and form aforesaid by replying pleaded, and the matter therein contained, are not sufficient in law for the said *N.* to have or maintain his

Demurrer.

Causes of demurrer.

said action against them the said *J.* and *M.* and that they have no need and are not bound by the law of the land in any maner to answer to the said plea in manner and form aforesaid pleaded; and this they are ready to verify: Wherefore, for default of a sufficient replication of the said *N.* in this behalf, the said *J.* and *M.* pray judgment, and that the said *N.* may be barred from having his said action against them the said *J.* and *M.* &c. And for causes of demurring in law according to the form of the statute in such case made and provided, the said *J.* and *M.* shew here to the court, and demonstrate the following cases, to wit, for that the said replication is double, and for that there are several conclusions, and the said *N.* four times prays judgment, whereas he ought to have prayed judgment but once; and for that the said *N.* ill concludes to the country when he ought not.

*Edward Northey,
Nicholas Hooper.*

Joinder.

And the said *N.* says, that the said plea by him the said *N.* in manner and form aforesaid above by replying pleaded, and the matter therein contained, are good and sufficient in law for him the said *N.* to have and maintain his said action against the said *J.* and *M.* which said plea and the matter therein contained he the said *N.* is ready to verify and prove, as the court, &c. And because the said *J.* and *M.* do not answer the said plea,
nor

nor as yet have any ways denied it, he the said N. as before, prays judgment, and his said debt, together with his damages by occasion of the detaining that debt, to be adjudged to him, &c. But because the court of our said lord the king now here is not yet advised about giving judgment of and concerning the premisses, day is therefore given to the said parties to come before our lord the king at *Westminster*, until next after *Trinity term* to hear judgment of and upon the same premisses, for that the court of our said lord the king now here is not yet advised thereof.

Continuance.

Trinity term in the thirtieth and thirty-first years of the reign of king George the second.

Middlesex, *A. F.* assignee of *William Beckford*, esq; and *Ive Whitebread*, esq; late sheriff of the county of *Middlesex*, according to the form of the statute in such case made and provided, complains of *C. D.* gentleman, one of the attornies of the court of our lord the king, before the king himself present here in court in his own person, of a plea, that he render to the said *A.* thirty-six pounds of lawful money of *Great Britain*, which he owes to and unjustly detains from him: For that whereas he the said *A.* after the first day of *Trinity term* in the year of our Lord one thousand seven hundred and six, to wit, on the seventh day

Declaration on a bail bond against an attorney B. R.

Bill of Middlesex sued out.

of July in the thirtieth year of the reign of his present majesty, sued and prosecuted out of his said majesty's court, before the king himself, the said court then and still being at *Westminster* in the county of *Middlesex* aforesaid, his said majesty's certain precept called a bill of *Middlesex*, directed to the then sheriff of *Middlesex*, by which said precept our said lord the now king commanded the said then sheriff, that he should take one *T. L.* if he might be found in his bailiwick, and him safely keep, so that he might have his body before the lord the king at *Westminster*, on Saturday next after the morrow of *All Souls* then next following, to answer to the said *A.* in a plea of trespass, and also to a bill of the said *A.* against the said *T.* for forty pounds upon promise, according to the custom of the court of our lord the king, before the king himself to be exhibited; and that the said then sheriff should have then there that precept, on which same precept an indorsement in writing was duly made, requiring bail for eighteen pounds, by virtue of an affidavit of the cause of action before then duly made and entered of record in the said court according to the form of the statute in such case made and provided, which said precept so indorsed afterwards, and before the return thereof, to wit, on the fourth day of *August* in the thirtieth year aforesaid, at *Westminster* aforesaid, was delivered by the said *A.* to the aforesaid *William Beckford*, esq; and *Ive Whitebread*, esq; who then and from thence, until and at and after the arrest

*Affidavit of
the debt.*

*Bill of Mid-
dlesex deliver-
ed to the sheriff.*

rest hereafter mentioned, was sheriff of the said county of *Middlesex*, to be executed in due form of law, by virtue of which said precept the said *William Beckford*, esq; and *Ive Whitebread*, esq; so being sheriff of the said county of *Middlesex*, as aforesaid, afterwards and before the return of the said precept, to wit, on the said fourth day of *August* in the thirtieth year aforesaid, within the said then sheriff's bailiwick, to wit, at *Westminster* aforesaid, in the county of *Middlesex* aforesaid, took and arrested the said *T. L.* by his body, and then and there had him in his custody at the suit of the said *A.* by virtue of the said precept; and the said *T. L.* by virtue of the said precept being so arrested and in custody of the said then sheriff, he the said then sheriff of the said county of *Middlesex*, took bail for the appearance of the said *T. L.* at the return of the said precept according to the exigency of the said precept; and on that occasion the said *C. D.* as bail or security for the said *T. L.* on the said fourth day of *August* in the said thirtieth year of the reign of his present majesty at *Westminster* aforesaid, in the county aforesaid, by his certain writing obligatory, commonly called a bail bond, sealed with his seal, and now shewn to the court of our lord the king before the king himself here, the date whereof is the same day and year last aforesaid, became held and firmly bound to the said *William Beckford*, and *Ive Whitebread* then being sheriff of the county of *Middlesex* aforesaid, by the name of *William Beckford*, esq; and *Ive Whitebread*, esq; she-

*Defendant
thereon arrest-
ed.*

*Bail bond
given.*

Condition.

riff of the county of *Middlesex*, in the said thirty-six pounds of good and lawful money of *Great Britain*, to be paid to the said then sheriff or his assigns, when he the said *C. D.* should be thereunto afterwards requested, under this condition, that if the said *T. L.* did appear before the lord the king at *Westminster*, on *Saturday* next after the morrow of *All Souls* aforesaid, to answer to the said *A.* of the said plea of trespass, as also to the said bill of the said *A.* against the said *T.* of forty pounds upon promise, according, &c. to be exhibited; then the said obligation to be void and of no force, otherwise to stand and remain in full force, vigour and effect, as by the said writing obligatory and the condition thereof (relation being thereunto had) more fully and at large appears; and the said *A.* saith, that the said *T. L.* did not appear before the said lord the king at *Westminster*, on *Saturday* next after the morrow of *All Souls* aforesaid mentioned in the said condition according to the form and effect of the said condition, whereby the said writing obligatory became forfeited. And whereas the said *William Beckford*, esq; and *Ive Whitebread*, esq; so being late sheriff of the said county of *Middlesex* as aforesaid, afterwards and before the payment of the said thirty-six pounds contained in the said writing obligatory, or any part thereof, to wit, on the twenty-sixth day of *April* in the year of our Lord one thousand seven hundred and fifty-seven, at *Westminster* aforesaid in the county aforesaid, at the request and costs of the said *A.*

Breach.

Bail bond
assigned.

A. plaintiff in that suit, according to the form of the statute in such case made and provided, in due manner assigned to the said *A.* the said writing obligatory, and attesting the same under the hand and seal of office of the said late sheriff of the said county of *Middlesex*, in the presence of two credible witnesses, as by the said assignment indorsed on the said writing obligatory, and duly stampd before the exhibiting of the bill of the said *A.* and to the said court of our said lord the king, before the king himself here now shewn, the date whereof is the said twenty-sixth day of *April* in the year of our Lord one thousand seven hundred and fifty-seven aforesaid, more fully appears; by reason of which said premises, and by force of the statute in such case made and provided, an action hath accrued to the said *A.* as assignee of the aforesaid sheriff of the said county of *Middlesex*, to demand and have of the said *C. D.* the aforesaid thirty-six pounds: Yet the said *C. D.* (although often requested, &c.) hath not paid the said thirty-six pounds, or any part thereof, to the said sheriff before the said assignment, or to the said *A.* since the said assignment, but hath hitherto wholly refused to pay the same to the said late sheriff, or to the said *A.* and still doth refuse to pay the same to the said *A.* to the damage of the said *A.* of twenty pounds; and therefore brings his suit, &c.

Pledges to prosecute { *John Doe,*
and
Richard Roe.
Mid-

B. R. Debt on
a bail bond by
the assignee of
the sheriff a-
gainst one of
the bail.

Lill. Ent. 173.

Pract. Reg.

172.

Bill of Mid-
dlesex sued
out.

Middlesex, *J. W.* assignee of Sir R. B. knt. to wit, *J.* and Sir R. K. knt. Sheriff of the county of *Middlesex* afore said, according to the form of the statute in such lately made and provided, complains of *J. J.* other- wife called, *Et.* being in the custody of the marshal, *Et.* of a plea, that he render to him forty pounds of lawful money of *Great Britain*, which he owes him and unjustly detains; for that, to wit, That *whereas* after the first day of *Trinity* term in the year of our Lord one thousand seven hundred and six, to wit, * on the twentieth day of *May* in the year of our Lord one thousand seven hundred and fifteen, the said *J. W.* prosecuted out of the court of our said lord the king, before the king himself, (the said court then being at *Westminster* in the county of *Middlesex*, afore- said) a precept of our said lord the king, commonly called a bill of *Middlesex*, directed to the sheriff of the said county of *Middlesex*, by which it was commanded to the said sheriff, that he should take one *P. B.* the younger, if he should be found in his bailiwick, and keep him safely, so that he should have his body before our said lord the king at *Westminster* on *Monday* next after the morrow of *All Souls*, to answer the said *J. W.* of a plea of trespass, and also to a bill of the said *J. W.* against the said *P. B.* for twenty pounds of debt,

* Vide 2 R. Raym. 1557. If on a day in the vaca-
tion, bad. Vide Andr. 374.

debt, according to the custom of the court of our said lord the king, before the king himself, to be exhibited, which said precept afterwards, and before the return of the same, to wit, on the said twentieth day of *May* in the year of our lord one thousand seven hundred and fifteen aforesaid, at the parish of *St. Clement Danes* in the county of *Middlesex* aforesaid, was delivered to the said Sir *R. B. knt.* and Sir *B. K. knt.* then being sheriff of the said county of *Middlesex*, to be executed in due form of law: By virtue of which said precept, directed to the sheriff of the said county of *Middlesex* in form aforesaid, the said Sir *R. B. knt.* and Sir *R. K. knt.* then being sheriff of the said county of *Middlesex* as aforesaid, afterwards, to wit, on the said twentieth day of *May* in the said year of our Lord one thousand seven hundred and fifteen, took and arrested the said *P. B.* at the parish aforesaid in the county aforesaid, and had, detained and kept the said *P.* then and there in his custody by virtue of the said precept and that arrest: *And whereas* the said *J. J.* afterwards, to wit, on the twenty-eighth day of *May* in the year of our Lord one thousand seven hundred and fifteen aforesaid, at the parish aforesaid in the county aforesaid, the said *P. B.* being so taken, arrested, detained and kept by the said sheriff of the said county of *Middlesex* as aforesaid, and then at the parish aforesaid in the county aforesaid remaining in the custody of the said sheriff by virtue of the said precept aforesaid, by his writing obligatory, sealed with the seal of the said *J. J.*

*Delivered to
the sheriff.*

*Defendant ar-
rested thereon.*

*Bail bond
given.*

Profert.

and to the court of our said lord the now king here shewn, the date of which said writing obligatory is on the same twenty-eighth day of *May* in the year of our Lord one thousand seven hundred and fifteen aforesaid, *acknowledged himself* to be held and firmly bound to the said Sir *R. B.* knt. and Sir *R. K.* knt. then being sheriff of the said county of *Middlesex* as aforesaid, by the name of Sir *R. B.* knt. and Sir *R. K.* knt. sheriff of the county aforesaid, in the said forty pounds, to be paid to the said sheriff or his certain attorney, executors, administrators or assigns, when he should be thereunto afterwards required:

Condition.

With a condition to the said writing obligatory underwritten, that if the said *P. B.* should appear before our said lord the king at *Westminster*, on the said *Monday* next after the morrow of the ascension of our Lord, to answer the said *J. W.* of a plea of trespass, and also to a bill as aforesaid, for twenty pounds of debt, then the said writing obligatory to be void and of no force, otherwise to stand and remain in its full force and effect: *And where-*

Breach in non-appearance.

as the said *P. B.* did not appear before our said lord the king at *Westminster* on the said *Monday* next after the morrow of the Ascension of our Lord in the said condition mentioned, according to the form and effect of that condition, whereby the said writing obligatory became forfeited: *And whereas* afterwards to wit, on the eleventh day of *June* in the year of our Lord one thousand seven hundred and fifteen aforesaid, at the parish aforesaid in the county aforesaid, at the request

Bail bond of signed to plaintiff.

quest and charges of the said *J. W.* the said Sir *R. B.* knt. and Sir *R. K.* knt. sheriff of the county of *Middlesex* aforesaid, by the name of Sir *R. B.* knt. and Sir *R. K.* knt. sheriff of the county aforesaid, assigned to the said *J. W.* the said writing obligatory so made for the appearance of the said *P. B.* as aforesaid, by indorsing the assignment of the said sheriff of the said writing obligatory upon the said writing obligatory, and by then and there attesting the said assignment under the hand and seal of the said sheriff, * in the presence of two credible witnesses, according to the form of the statute in such case lately made and provided; which said assignment (the date whereof is on the same eleventh day of *June* ^{Proferat of the assignment.} in the year of our Lord one thousand seven hundred and fifteen aforesaid) is also to the court of our said lord the now king here shewn; by reason of which said premisses, *Actio accrevit accord- quer'.*

* Debt on a bail bond, judgment by *Nil dicit*, error assigned for that only, alledged, that sheriff at request and costs of plaintiff, according to the form of the statute, &c. assigned the bond to him, and did not shew that sheriff assigned the bond to plaintiff, by indorsing the same, and attesting it under his hand and seal in the presence of two or more credible witnesses, according to stat. 4 *Ann. c. 16. s. 20. sed non allocatur*; all defects which would have been aided by a verdict being aided after judgment by *Nil dicit*, by stat. 4 *Ann. c. 16. s. 2.* And it being alledged, that the said bond was assigned *secundum formam stat.* judgment affirmed. *Mich. 3 Geo. 2. B. R. Missin v. Morgan, 2 R. Raym. 1564. Vide Carth. 304.*

*Breach of
payment.*

according to the form of the statute in that behalf made and provided, an action has accrued to the said *J. W.* as assignee of the said Sir *R. B.* knt. and Sir *R. K.* knt. Sheriff of the said county of *Middlesex* as aforesaid, to demand and have of the said *J. J.* the said forty pounds: Yet the said *J. J.* although often required, &c. has not yet paid the said forty pounds to the said *J. W.* or to the said Sir *R. B.* and Sir *R. K.* or to any one of them, but has hitherto intirely refused to pay the same to the said *J. W.* or to the said Sir *R. B.* and Sir *R. K.* or to any one of them, and still refuses to pay the same to the said *J. W.* to the damage of the said *J. W.* of ten pounds; and thereupon he brings suit, &c.

*B. R. Debt on
a bail bond by
two assignees
of the sheriff
against one of
the bail.
Lill. Ent. 175.
Pract. Reg.
172.*

*Principal ar-
rested on a la-
titat.*

Northampton, E. P. widow, and *J. T.* assignees of Sir *F. St. J.* now to wit, bart. late *F. St. J.* esq; late sheriff of the county aforesaid, according to the form of the statute in such case lately made and provided, complain of *J. B.* otherwise called, &c. being in the custody of the marshal, &c. of a plea, that he render to them one thousand and sixty pounds of lawful money of *Great Britain*, which he owes them and unjustly detains; For that, to wit, That whereas one *R. T.* the younger, after the first day of *Trinity* term in the year of our Lord one thousand seven hundred and six, to wit, on the twenty second day of *July* in the year of our Lord one thousand seven hundred and fifteen, at *Oundle* in the county aforesaid, by the said *F. St. J.* then sheriff of the county aforesaid

aforesaid, was arrested at the suit of them the said *E.* and *J.* by virtue of a certain writ of our lord the king called a *latitat*, prosecuted out of the court of our said lord the king before the king himself, the said court being then at *Westminster* in the county of *Middlesex*, by the said *E.* and *J.* against the said *R. T.* the younger, in a plea of trespass, and to a bill of the said *E.* and *J.* for eight hundred pounds upon promise, according to the custom, &c. returnable in the same court on * *Monday* next after three weeks of *St. Michael* then next ensuing: And whereas the said *F. St. J.* being then sheriff of the said county of *Northampton* as aforesaid, of and upon that arrest took bail for the said *R. T.* the younger, to wit, the said *R. T.* the younger, and the said *J. B.* and one *R. T.* which said *R. T.* the younger, *J. B.* and *R. T.* on the said twenty-second day of *July* in the year of our Lord aforesaid, at *Oundle* aforesaid in the county of *Profert.* aforesaid, by a writing obligatory, which, sealed as well with the seal of the said *J. B.* as with the seals of the said *R. T.* the younger and *R. T.* the said *E.* and *J.* bring here into court, the date whereof is on the same day and year last aforesaid; by which said writing the said *J. B.* acknowledged himself to be held and firmly bound to the said *F. St. J.* then being sheriff of the said county as aforesaid, by the name of *F. St. J.* esq; sheriff of the county of *Northampton*, in the said one thousand and sixty

* No such return at this day. See *Vol. 1. p. —.*

Condition.

Bail-bond as-
signed.

Profert of the
indorsement.

sixty pounds, to be paid to the said sheriff or his assigns when he the said *J. B.* should be thereunto required: With a condition to the said writing obligatory underwritten, that if the said *R. T.* the younger should appear before our said lord the king at *Westminster* on the said * *Monday* next after three weeks of *St. Michael*, to answer to the said *E. P.* widow, and *J. T.* of a plea of trespass, and also to a bill of the said *E.* and *J.* against the said *R. T.* the younger, for eight hundred pounds upon promise, according to the custom of the court of our lord the king, that then the said obligation should be void and of no effect, otherwise it should stand and remain in full force, strength and effect, as by the said writing obligatory and the condition thereof more fully appears: *And whereas* the said eight hundred pounds being then unpaid, afterwards, to wit, on the third day of *March* in the year of our Lord aforesaid, at *Oundle* aforesaid in the county aforesaid, at the request and charges of the said *E.* and *J.* plaintiffs in that suit, the said *F. St. J.* by the name of *Sir P. St. J.* bart. late sheriff of the county of *Northampton* aforesaid, by his indorsement upon the said writing obligatory, under the hand and seal of the said late sheriff, made and attested in the presence of *E. H.* and *T. E.* two credible witnesses, *which*, sealed with the seal of the office of the said *F. St. J.* the said *E.* and *J.* bring here into court, the date where-

of

* No such return.

of is on the same day and year last mentioned, assigned to the said *E.* and *J.* the said writing obligatory, according to the form of the statute in such case lately made and provided, of which premisses the said *J. B.* afterwards, to wit, on the same day and year, and at the place last abovesaid had notice: *And* the said *E.* and *J.* in fact say, that the said *R. T.* the younger did not appear before our said lord the king at *Westminster* on the said *Monday* next after three weeks of *St. Michael*, in the said condition mentioned, according to the form of that condition, whereby the said writing obligatory became forfeited; by reason of which premisses, and by force, and according to the form of the said statute in such case lately made and provided, an action accrued to the said *E.* and *J.* as assignees of the said *F. St. J.* late sheriff of the county of *Northampton* afore said, to demand and have of the said *J. B.* the said one thousand and sixty pounds: *Yet* the said *J. B.* although often required, &c. has not yet paid the said one thousand and sixty pounds to the said *E.* and *J.* but has hitherto intirely refused, and still doth refuse to pay them the same, to the damage of the said *E.* and *J.* of twenty pounds; and thereupon they bring suit, &c.

Northampton, E. P. widow, and *J. T.* assignees, &c. complain of *R. T.* the younger, otherwise called, &c. being in the custody of the marshal, &c. of a plea, that he render to them one thousand and sixty pounds of lawful money of *Great Britain*.

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U

Lill Ent. 176.

Averment that the principal defendant did not appear.

Per quod actio accrevit.

Defendant arrested on a latitat.

tain, which he owes them and unjustly detains; *For that*, to wit, That whereas the said *R.* after the first day of *Trinity* term in the year of our Lord one thousand seven hundred and six, to wit, on the twenty-second day of *July* in the year of our Lord one thousand seven hundred and fifteen, at *Oundle* in the county aforesaid, was arrested by the said *F. St. J.* then sheriff of the county aforesaid, at the suit of the said *E.* and *J.* by virtue of a certain writ of our said lord the king, called a *latitat*, prosecuted out of the court of our said lord the now king, before the king himself, the said court then being at *Westminster* in the county of *Middlesex*, by the said *E.* and *J.* against the said *R.* in a plea of trespass, and also to a bill of the said *E.* and *J.* for eight hundred pounds upon promise, according to the custom, &c. returnable in the same court of our said lord the king on * *Monday* next after three weeks of *St. Michael* then next following: *And whereas* the said *F. St. J.* then being sheriff of the said county as aforesaid, of and upon that arrest took bail for the said *R. T.* the younger, to wit, the said *R. T.* the younger, and *J. B.* and *R. T.* which said *R. T.* the younger, *J. B.* and *R. T.* on the said twenty-second day of *July* in the year aforesaid, at *Oundle* aforesaid in the county aforesaid, by their writing obligatory, which, sealed as well with the seal of the said *R. T.* the younger, as with the seals of the

Bail-bond given.

Profert of the bond.

* See before.

the said *J. B.* and *R. T.* the said *E.* and *J.* bring here into court, the date whereof is on the day and year last abovesaid, by which said writing obligatory the said *R. T.* the younger acknowledged himself to be held and firmly bound to the said *F. St. J.* then being sheriff of the said county as aforesaid, by the name of *F. St. J.* esq; sheriff of the county aforesaid, in the said one thousand and sixty pounds, to be paid to the said sheriff or his assigns, when he should be thereunto required: With a condition to the said writing obligatory underwritten, that if the said *R. T.* the younger should appear before our said lord the king at *Westminster* on the said * *Monday* next after three weeks of *St. Michael*, to answer the said *E. P.* widow, and *J. T.* of a plea of trespass, and also to a bill of the said *E.* and *J.* against the said *R. T.* the younger, for eight hundred pounds upon promise, according to the custom of the court of our lord the king, that then the said obligation should be void and of no force, otherwise to stand and remain in its full strength, force and effect, as by the said writing obligatory and the condition thereof more fully appears; *And whereas* afterwards, to wit, on the third day of *March* in the year of our Lord aforesaid, at *Oundle* aforesaid, in the county aforesaid, the said *F. St. J.* the said eight hundred pounds being then unpaid him, at the request

Condition.

Bail-bond assigned.

U 2

and

* See before.

*Profert of the
assignment.*

*Averment that
defendant did
not appear.*

*Per quod ac-
tio accrevit.*

Breach.

and charges of the said *E.* and *J.* plaintiffs in that suit, by the name of Sir *F. St. J.* bart. by his indorsement made upon the said writing obligatory under the hand and seal of the said late sheriff, and attested in the presence of *F. H.* and *T. E.* two credible witnesses, *which*, sealed with the seal of the office of the said *F. St. J.* the said *E.* and *J.* bring here into court, the date whereof is on the same day and year last mentioned, assigned to the said *E.* and *J.* the said writing obligatory, according to the form of the statute in such case lately made and provided, of which premisses the said *R. T.* the younger, afterwards, to wit, on the same day and year, and at the place last mentioned, had notice; And the said *E.* and *J.* in fact say, that the said *R. T.* the younger did not appear before our said lord the king at *Westminster* on the said *Monday* next after three weeks of *St. Michael* in the said condition mentioned, according to the form of that condition, whereby the said writing obligatory became forfeited; by reason of which premisses, and by force, and according to the form of the statute in such case lately made and provided, an action accrued to the said *E.* and *J.* as assignees of the said *F. St. J.* late sheriff of the said county of *Northampton*, to demand and have of the said *R. T.* the younger the said one thousand and sixty pounds; Yet the said *R. T.* the younger, although often required, &c.

Easter

Easter term in the tenth year of king
George the second.

Middlesex, *T. D.* assignee of Sir *W. R.* knt. B R. Debt on
to wit, *T.* and Sir *B. R.* knt. sheriff of *a bail-bond by*
the said county of *Middlesex*, according to *the assignee of*
the form of the statute in such case lately *the sheriff*
made and provided, complains of *R. J.* other- *against one of*
wise called *R. J.* of the parish of St. *Martin*
in the Fields in the county of *Middlesex*, gent.
in the custody of the marshal of the *Mar-*
shalsea of our lord the king, before the king
himself, of a plea, that he render to him
forty pounds of lawful money of *Great Bri-*
tain, which he owes him and unjustly detains;
For that, to wit, that whereas the said *T. D.* *Bill of Mid-*
after the first day of *Trinity* term in the year *dlesex sued*
of our Lord one thousand seven hundred and *out.*
six, to wit, on the twelfth day of *February*
in the tenth year of the reign of our sove-
reign lord *George* the second, now king of
Great Britain, &c. at *Westminster* in the said
county of *Middlesex*, sued forth out of the
court of our lord the king, before the king
himself, (the said court being then at *West-*
minster aforesaid in the said county of *Middle-*
sex) a certain precept of our said lord the
king, commonly called a bill of *Middlesex*,
directed to the sheriff of the said county of
Middlesex, by which it was commanded to
the said sheriff, that he should take one *O. B.*
if he should be found in his bailiwick, and

*Delivered to
the sheriff.*

*Defendant
arrested.*

*Bail bond
given.*

safely keep him, so that he might have his body before our said lord the king at *Westminster*, on *Wednesday* next after fifteen days from the day of *Easter*, to answer the said *T. D.* in a plea of trespass, and also to a bill of the said *T. D.* against the said *O. B.* for twenty pounds upon promise, according to the custom of the court of our said lord the king, before the king himself to be exhibited; and that he should have there then that precept, which said precept afterwards, and before the return thereof, to wit, on the twenty-ninth day of *March* in the said tenth year of his present majesty's reign, at *Westminster* aforesaid in the county aforesaid, was delivered to the said Sir *W. R. knt.* and Sir *B. R. knt.* then sheriff of the said county of *Middlesex*, to be executed in due form of law; by virtue of which said precept, directed to the said sheriff of *Middlesex* in form aforesaid, the said Sir *W. R. knt.* and Sir *B. R. knt.* then and yet sheriff of the said county of *Middlesex*, afterwards, to wit, on the said twenty-ninth day of *March* in the tenth year of his present majesty's reign, at *Westminster* aforesaid in the county aforesaid, took and arrested the said *O. B.* and held and kept the said *O.* then and there in his custody by virtue of the said precept and arrest; And also, whereas afterwards, to wit, on the second day of *April* in the tenth year of his present majesty's reign, at *Westminster* aforesaid in the county aforesaid, the said *O. B.* being so taken, arrested, detained and kept by the said sheriff
of

of *Middlesex* as aforesaid, and then at *Westminster* aforesaid in the said county of *Middlesex* remaining in custody of the said sheriff, by virtue of the said precept, the said *R. J.* by his writing obligatory, sealed with his seal, And to the court of our said lord the king *Profert.* now here shewn, the date of which said writing obligatory is the day and year last aforesaid, acknowledged himself to be held and firmly bound to the said Sir *W. R.* knt. and Sir *B. R.* knt. then sheriff of the said county of *Middlesex* as aforesaid, by the name of Sir *W. R.* knt. and Sir *B. R.* knt. sheriff of the county of *Middlesex* aforesaid, in the sum of forty pounds of lawful money of *Great Britain*, to be paid to the said sheriff or his certain attorney, his executors, administrators or assigns, when he should be thereunto required, with a condition to the said writing obligatory *Condition.* underwritten, that if the said *O. B.* should appear before our lord the king at *Westminster* on the said *Wednesday* next after fifteen days from the day of *Easter*, to answer the said *T. D.* in a plea of trespass, and also to a bill as aforesaid, for twenty pounds upon promise, that then the said obligation should be void, or else to remain in full force and virtue; which said writing obligatory, with the condition there underwritten, was taken by the said sheriff by virtue of the said precept, and by force of the statute in such case lately made and provided: *Default made.* And whereas the said *O. B.* did not appear before our said lord the king at *Westminster* on the said *Wednesday* next after fifteen days from the day of *Easter*, in the

condition aforesaid mentioned, according to the form and effect of that condition; by which the said writing obligatory became forfeited; *Bond forfeited.* And whereas afterwards, to wit, on the fourth day of *May* in the year last mentioned, at *Westminster* aforesaid in the said county of *Middlesex*, the said writing obligatory being so forfeited, and the money therein mentioned, or any part thereof, not being paid, the said Sir *W. R.* knt. and Sir *B. R.* knt. sheriff of the said county of *Middlesex*, by the name of Sir *W. R.* knt. and Sir *B. R.* knt. sheriff of the said county of *Middlesex*, at the request and charges of the said *T. D.* assigned to the said *T. D.* the said writing obligatory so as aforesaid made, for the appearance of the said *O. B.* by indorsing the said assignment on the said writing obligatory, and by then and there attesting the said assignment under his hand and seal, in the presence of two credible witnesses, to wit, and according to the form of the statute in such case made and provided; which said assignment (the date of which is the said fourth day of *May* in the year last aforesaid) is also to the said court of our said lord the king now here shewn; by reason of which said premisses, according to the form of the statute in that case made and provided, an action hath accrued to the said *T. D.* as assignee of the said Sir *W. R.* knt. and Sir *B. R.* knt. sheriff of the said county of *Middlesex* as aforesaid, to demand and have of the said *R. J.* the said sum of forty pounds: Nevertheless the said *R. J.* although often required,

Assignment of bail-bond.

Profert of assignment.

Actio accrevit.

297

_____ for the plaintiff.
_____ for the defendant.

Hilary term in the year
of, &c.

Memorandum of the same term with declaration.

Debt by barren and feme, on a bond to feme while sole.

Middlesex, to wit, A. B. esq; and C. his wife, complain of D. E. esq; otherwise called D. E. of, &c. esq; being in the custody of the marshal of the Marshalsea of our lord the king,

Profert.

king, before the king himself, of a plea, that he render to them five hundred pounds, lawful money of *Great Britain*, which he owes them and unjustly detains; for that the said *D. E.* on the fourteenth day of *May* in the year of our Lord one thousand seven hundred and thirty-four, at *Westminster* in the county of *Middlesex* afore said by his certain writing obligatory, sealed with the seal of him the said *D. E.* And to the court of our said lord the king now here shewn, the date whereof is on the same day and year acknowledged himself to be held and firmly bound unto the said *C.* whilst sole, by the name of *C. L.* of the parish of _____ in the county of

spinster, in the said five hundred pounds, to be paid unto her the said *C.* when he should be thereunto required; yet the said *D. E.* (although by the said *C.* whilst sole, and after her intermarriage with the said *A. B.* by them the said *A. B.* and *C.* often required, &c.) the said five hundred pounds unto the said *C.* whilst sole, * or after her intermarriage with the said *A. B.* unto them the said *A. B.* and *G.* or either of them, hath not yet paid, but hath hitherto absolutely refused, and still doth refuse to pay the same; wherefore they the said *A. B.* and *C.* say that they are injured, and have damage to the value of twenty pounds: And thereupon they bring their suit, &c.

And the said *D. E.* by *T. M.* his attorney, comes and defends the force and injury when,
 &c.

* *Vide* note fol.

Ec. and prays oyer of the said writing; and *Oyer prayed.*
 it is read to him in these words: Know all
 men, *Ec.* and he also prays oyer of the con-
 dition of the said writing; and it is likewise
 read to him in these words, to wit, The con-
 dition of this obligation is such, *Ec.* which
 being read and heard, he the said *D. E.* saith,
 that the said *A. B.* and *C.* his wife ought *Plea, that an*
 not to have their said action against him, be- *interlineation*
 cause he saith, that he the said *D. E.* on the *was made af-*
 said fourteenth day of *May* in the said year of *ter executing;*
 our Lord one thousand seven hundred and *Et sic non est*
 fourteen, at *Westminster* aforesaid, did make, *factum.*
 seal, and as his act and deed deliver unto the
 said *C.* when sole, the writing herein before
 mentioned and set forth: But he the said
D. E. saith, that the condition thereof, at
 the time of the sealing and delivery of the
 same by him the said *D. E.* was, and was
 thereunto subscribed in the words and figures
 following, to wit, The condition of this obli-
 gation is such, that if the above-bounden
D. E. his heirs, executors or administrators,
 do well and truly pay, or cause to be paid,
 unto the above-named *C.* the annuity of one
 and twenty pounds of lawful money of *Great*
Britain, by quarterly payments, on the four
 most usual feasts or quarter days in the year,
 that is to say, *Michaelmas* day, *Christmas* day,
Lady day, and *Midsummer* day; the first pay-
 ment thereof to be made on the nine and
 twentieth day of *September* now next ensuing
 the date of these presents, or within fourteen
 days after; then this obligation to be void,
 or else to remain in full force and virtue:
 And

And the said *D. E.* further saith, that after the sealing and delivering of the said writing by him the said *D. E.* with that same condition as aforesaid thereunto subscribed, to wit, the said fourteenth day of *May* in the said year of our Lord one thousand seven hundred and thirty-four, at *Westminster* aforesaid, he the said *D. E.* at the request of the said *C.* did interline in that same condition between the word (*Britain*) and the word (*by*) these words following, to wit, (yearly and every year during the natural life of the said *C.*) as these words stand and appear in the said condition, of which oyer is above given; and so he the said *D. E.* saith, that the aforesaid writing, with the above mentioned condition, of which oyer is above given, is not the deed of him the said *D. E.* And of this he puts himself upon the country.

B. R. Debt on *London, T. G.* merchant, complains of *R. F.*
a lease for *to wit,* goldsmith, executor of the testa-
years against *ment and last will of Sir T. F. knt. deceased,*
the executor of *being in the custody of the marshal of the*
the lessee, for *Marshalsea of our lord William and lady*
rent due in *Mary, now king and queen of England, &c.*
testator's time, *before the said king and queen, of a plea,*
and also in the *that he render to him one hundred twenty and*
executor's *three pounds and fifteen shillings, which he*
time. *unjustly detains from him; for that, to wit,*
Lill. Ent. 148. *That whereas by a certain indenture made on*
Lease. *the thirteenth day of March in the year of*
our Lord one thousand six hundred and eighty
eight at London aforesaid, to wit, in the pa-
rish of St. Mary le Bow in the ward of Cheap,
between

between the said *T. G.* by the name of *T. G.* of *London*, merchant, of the one part, and the said *Sir T. F.* by the name of *Sir T. F.* of *London*, knt. of the other part; *one part* of Profert. which, sealed with the seal of the said *Sir T. F.* in his life-time, and delivered as his deed, the said *T. G.* brings here into court, the date whereof is on the same day and year, *reciting*, Reciting. That whereas by a certain indenture, bearing date on the tenth day of *January* in the year of our Lord one thousand six hundred and seventy-one, and in the twenty-third year of the reign of his late majesty *Charles* the second, late king of *England*, &c. made or mentioned to be made between the said *T. G.* and *E.* his wife, *F. S.* of *Diggeswell* in the county of *Hertford*, esq; and *H. S.* citizen and merchant-taylor of *London*, of the one part, and the said *Sir T. F.* by the name of *T. F.* of *London*, goldsmith, of the other part; It was Fine to be agreed that the said *T. G.* and *E.* his wife, levied. *F. S.* and *H. S.* before the end of the term of *St. Hilary* then next ensuing the date of the said indenture, should levy and acknowledge before the justices of the common bench of the said late king at *Westminster*, to the said *T. F.* and his heirs one fine *sur consueance de droit come ceo*, &c. with proclamations, of all that mesuage or tenement situate in *Fleet-street* between the *Inner Temple Gate* and the *Middle Temple Gate*, in the parish of *St. Dunstan in the West* in the city of *London*, then in the occupation of *R. C.* or his assigns or under-tenants; and of all that mesuage or tenement situate in *Fleet-street* aforesaid in the city of *London*,

next adjoining to the aforesaid mesuage, and then or late in the tenure or occupation of *J. G.* or his assignee or assigns, together with all and singular their appurtenances thereunto belonging, or in any manner appertaining; and of all other the mesuages and tenements of the said *T.* and *E. G.* or of either of them, situate and being in the parish of *St. Dunstan* in the city of *London*, by such name or names, additions or descriptions, to ascertain the same as shall be thought fit: And by the said indenture it was declared, that the said fine, so or in any other manner to be had or levied, should be and enure to the use of the said *T. G.* for his life, and after his decease to the use of the said *E.* wife of the said *T. G.* for her life; and after the death of the said *T. G.* and *E.* his wife, then to the several other uses in the said indenture mentioned and declared, under and with the proviso following, to wit, Provided always and it was agreed by and between the said parties to the said indenture, and by them declared and agreed to be their intention and meaning, that it should be lawful to and for the said *T. G.* at any time or times during his natural life, and also for the said *E.* after the decease of the said *T. G.* to make or grant any lease or leases of the premisses, or of any part thereof, by indenture for any term or terms of years, either in possession or reversion, so that there should be reserved and made payable, for such of the said mesuages, as should be so leased during the whole of such terms respectively, as shall be so granted or made, so much yearly rent respectively,

Uses of the fine.

Power to make leases.

respectively, as such respective mesuage or tenement which shall be so demised had been let for the major part of ten years then last past, and so that the term of years in any new lease of the premisses, and the term of years then to come of all or any of the term or terms of years of the same, before such new lease in being, should not exceed in the whole twenty-one years, as by the said recited indenture and fine which was accordingly levied of the said mesuages and premisses, relation being thereunto had, would more at large appear: And whereas the said *T. F.* then had a lease of the said first mentioned mesuage at the yearly rent of forty pounds, which said lease would be expired on the second day of *May* which would be in the year of our Lord one thousand six hundred and ninety-one; *It was witnessed*, that the said *T. G.* for and in consideration of a surrender of the said recited indenture, and in prosecution and by virtue of the said recited proviso, and of the power and authority thereby reserved to the said *T. G.* and in consideration of the sum of five hundred pounds of lawful money of *England* to the said *T. G.* in hand paid at or before the sealing of the said indenture by the said Sir *T. F.* for and in the name of a fine or income, the receipt whereof he the said *T. G.* by the said indenture acknowledged, and thereof acquitted and discharged the said Sir *T. F.* his executors, administrators and assigns, by the said indenture; one hundred and fifty pounds, part of which said five hundred pounds had been laid out by the said

Q. Ill in debt.

Lease.

Exception.

T. G. in building and improving the said first mesuage then in the tenure or occupation of the said Sir *T. F.* and for the advance and increase of the rent thereof; and in consideration of the rents, covenants, provisoes and agreements in the said indenture afterwards reserved and mentioned on the part and behalf of the said Sir *T. F.* his executors, administrators and assigns, to be paid, done and performed, the said *T. G.* *had* demised, granted and to farm let, and by the said indenture *did* demise, grant, and to farm let to the said Sir *T. F.* his executors, administrators and assigns, *all that* mesuage or tenement, with the shops, cellars, follars, yards, chambers, rooms and garrets thereunto belonging, then in the tenure or occupation of the said Sir *T. F.* or his under-tenants or assigns, situate and being in *Fleet-street* aforesaid between the *Inner Temple Gate* and the *Middle Temple Gate*, in the parish of *St. Dunstan in the West* in the city of *London* aforesaid, and all lights, easements and profits, water-courses, commodities and appurtenances whatsoever, to the said demised mesuage and premisses then belonging (except and always reserved, &c.) And by the said indenture it was declared and agreed, that all drains, gutters, pipes, currents, water-courses and passages of and for water, and privileges of eves-droppings, and all easements, lights, windows, and other privileges and accomodations upon, in or by and thro' the said mesuage by the said indenture demised, or any part thereof, which then were made, used, accustomed or appertaining to the

the said mesuage or tenement belonging to the said T. G. late in the occupation of the said J. G. and then in the occupation of W. O. joining in the said demised premisses, should remain, continue, be held and enjoyed therewith during the term by the indenture under granted, in such sort as the same were then used, held and enjoyed; *to have and to hold* For twenty years and a half. the said demised mesuage or tenement, and premisses, with the appurtenances, and every part and parcel thereof (except as is before excepted) to the said Sir T. F. his executors, administrators and assigns, from the second day of *November* then last past before the date of the said indenture, for and during, and unto the full end and term of twenty years, and one half of a year thence next ensuing, fully to be compleated and ended; *Yielding and* Reddendum. *paying* therefore to the said T. G. and his assigns, yearly and every year, and from time to time during the said term of twenty years, and one half of a year, by the said indenture granted, if the said T. G. should live so long, and after his decease then to such person or persons, to whom the next use or estate of and in the said demised mesuage or tenement and premisses appertained, according to the limitation of the respective uses and estates in and by the said recited indenture limited, the yearly rent or sum of fifty and five pounds of lawful money of *England*, at four several days of payment in every year, to wit, on the second day of *February*, the second day of *May*, the second day of *August*, and the second day of *November*, by equal and even portions, as

Lessee enters.

Dies.

*Rent due in
testator's life-
time.*

*Rent due after
his death.*

by the said indenture brought here into court, relation being thereunto had, amongst other things more fully appears; *By virtue* of which said lease the said Sir *T. F.* in his life-time entered into the said mesuage with the appurtenances, and was thereof possessed, and held and enjoyed the said mesuage with the appurtenances, from the said second day of *November* in the said year of our Lord one thousand six hundred and eighty-eight, until the second day of *November* in the year of our Lord one thousand six hundred and ninety; and afterwards the said Sir *T. F.* knt. on the eleventh day of *November* in the year last aforesaid died, to wit, at *London* aforesaid, in the parish and ward aforesaid; And one hundred and ten pounds of the aforesaid rent (parcel of the said one hundred twenty and three pounds and fifteen shillings) for two years, ended on the said second day in the said year of our Lord one thousand six hundred and ninety-two, were then in arrear and no ways satisfied, and still remain unpaid to the said *T. G.* whereby an action accrued to the said *T. G.* to demand and have of the said Sir *T. F.* in his life-time, and of the said *R. F.* after the death of the said Sir *T. F.* the said one hundred and ten pounds, parcel of the said one hundred and twenty and three pounds and fifteen shillings; And also thirteen pounds and fifteen shillings (residue of the said one hundred twenty and three pounds and fifteen shillings) of the rent aforesaid, after the death of the said Sir *T. F.* for one quarter of a year, ended on the second day of *February* in the year of our Lord

one thousand six hundred and ninety-two
aforesaid, were in arrear and no ways satisfied
to the said T. G. and still remain unpaid;
whereby an action hath accrued to the said
T. G. to demand and have of the said R. F.
the said thirteen pounds and fifteen shillings
(residue of the said one hundred twenty
and three pounds and fifteen shillings): *Yet Breach,*
the said Sir T. F. in his life-time, and the
said R. after the death of the said Sir T. F.
although often required, &c. have not paid,
nor has either of them paid, the said one
hundred and ten pounds, parcel of the said
one hundred twenty and three pounds and
fifteen shillings, or any part thereof, to the
said T. G. nor has the said R. paid the said
thirteen pounds and fifteen shillings, or any
part thereof, to the said T. G. but the said R.
has refused and still does refuse to pay the
said one hundred twenty and three pounds
and fifteen shillings to the said T. G. and un-
justly detains the same, to the damage of the
said T. G. of sixty pounds; and thereupon he
brings suit, &c.

Hilary term in the ninth year of king
George the second.

Middlesex, T. T. complains of E. D. in the Debt on a pro-
to wit, T. custody of the marshal, &c. in *missory note.*
a plea, that he render to the said T. ten
pounds, which he owes to him and unjustly
detains, &c. for that *whereas* the said E. after
the first day of May in the year of our Lord

Debt for money borrowed.

one thousand seven hundred and five, to wit, on the twenty-second day of *May* in the year of our Lord one thousand seven hundred and thirty-four, at *Westminster*, in the said county, made his certain note in writing subscribed with his own hand, commonly called a promissory note, bearing date the same day and year, by which note the said *E.* promised to pay to the said *T.* or his order, five pounds, six months after the date thereof, for value received by the said *E.* and the said *E.* did not pay to the said *T.* the said five pounds mentioned in the said note, at the end of the said six months therein mentioned: and the said *T.* did not make any order of and concerning the payment of the said five pounds; by reason of which an action has accrued to the said *T.* to demand and have of the said *E.* the said five pounds, parcel of the said ten pounds: *And whereas* the said *E.* afterwards, to wit, on the first day of *March* in the year last mentioned, at *Westminster* aforesaid, borrowed of the said *T.* five pounds, residue of the said ten pounds, to be paid to the said *T.* when he should be requested to pay the same: *Nevertheless* the said *E.* (although often requested) hath not paid to the said *T.* the said ten pounds, or any part thereof, but hath hitherto denied, and still doth deny to pay the same to the said *T.* to the damage of the said *T.* of ten pounds; and thereupon he brings suit, &c.

Pledges, &c.

Mid-

Middlesex, W. N. complains of *J. B.* in the custody of the marshal, &c. of a plea, that he render to him 16*l.* of lawful money of *Great Britain*, which he oweth him and unjustly detaineth, for that, to wit, That *whereas* the said *J. B.* on the 26th day of *May* in the 11th year of the reign of our sovereign lady *Anne* now queen of *Great Britain*, &c. at *W.* in the county aforesaid, was indebted to the said *W. N.* in the said 16*l.* for so much money after the first day of *May* in the year of our Lord 1711. had and received by the said *J. B.* to the use of the said *W. N.* whereby an action accrued to the said *W. N.* to demand and have of the said *J. B.* the said 16*l.* according to the form of the statute made and provided in the parliament of our said sovereign lady the present queen, held at *W.* in the county of *M.* on the 25th day of *November* in the year of our Lord 1710. intituled, *An act for the better preventing of excessive and deceitful gaming.* Yet the said *J.* although often requested, hath not yet rendered the said 16*l.* to the said *W. N.* but hath hitherto refused, and still doth refuse to render the same to him. Wherefore he saith he is injured, and hath damage to the value of 20*l.* and thereof he bringeth suit, &c.

Nil debet was pleaded, and the plaintiff recovered a verdict, and thereupon the money was paid.

Declaration in debt on the statute 9 Ann. for preventing excessive and deceitful gaming.
Andr. 67.

Easter term 29 Geo. 2.

*Declaration in
debt for 5 l.
penalty on stat.
28 Geo. 2. c.
17. for pre-
servation of
the public
highways. B.
R.*

*Warwickshire, J. G. complaineth of J. B. in
to wit, J. the custody of the marshal
of the Marshalsea of our Lord the king, be-
fore the king himself, of a plea, that he ren-
der to him five pounds of lawful money of
Great Britain, which he oweth to him and
unjustly detaineth, &c. for that whereas the
said Thomas on the 26th day of April in the
year of our Lord 1756. at Alcester in the said
county, was indebted to the said John in
the said sum of five pounds, being forfeited
by An Act, intitled, an Act to amend an
Act made in the twenty-sixth year of the
reign of his present majesty, intitled, An
Act for the amendment and preservation of the
publick Highways and Turnpike Roads of this
Kingdom, and for the more effectual execution
of the Laws relating thereto; whereby an ac-
tion hath accrued to the said John to de-
mand and have of the said Thomas the said
five pounds above demanded.: Nevertheless
the said Thomas, although often required,
hath not rendered to the said John the said
five pounds, or any part thereof, but hath
hitherto altogether refused and still doth re-
fuse to render the same to him; whereupon
the said John saith, that he is injured and
hath damage to the value of ten pounds;
and therefore he bringeth this suit, &c.*

*W. for plaintiff } pledges to } John Doe
for defendant } prosecute } and
Richard Roe.
Mid-*

Middlesex, to wit, *W. C.* complaineth of *C. S.* in the custody of the marshal, &c. of a plea, that he render to him 23*l.* and 2*d.* of lawful money of *England*, which he oweth him and unjustly detaineth; for that, to wit, that *whereas* the said *W. C.* heretofore, to wit, in the term of *Easter* in the 4th year of the reign of our sovereign lady *Anne* now queen of *England*, &c. in the court of our said lady the queen, before the queen herself, the said court then being at *W.* in the said county of *M.* by the judgment of the said court recovered against the said *C.* by the name of *C. S.* 23*l.* and 2*d.* which in the said court of our said lady the queen, before the queen herself at *W.* aforesaid in the said county of *M.* were adjudged to the said *W.* for his damages which he sustained, as well by occasion of a certain trespass then lately done by the said *C.* to the said *W.* as for his costs and charges by the said *W.* about his suit in that behalf expended, whereof the said *J.* is convicted, as by the record thereof remaining in the said court of our said lady the queen, before the queen herself at *W.* aforesaid in the said county of *M.* more fully appeareth: Which said judgment still remaineth in its full force and effect, no ways satisfied or reversed; and the said *W.* hath not yet sued out his execution of the said judgment recovered in form aforesaid; *whereby* an action hath accrued to the said *W.* to have and demand of the said *C.* the said 23*l.* and 2*d.* Yet the said *C.*

*Declaration in
debt on a judgment after
verdict.*

although often requested, &c. hath not yet paid the said 23 *l.* and 2 *d.* to the said *W.* but hath hitherto intirely refused, and still doth refuse to pay him the same: Wherefore the said *W.* saith that he is injured, and hath damage to the value of 30 *l.* and thereof he bringeth suit, &c.

Declaration in debt for damages and costs on a judgment in ejectment in C. B. oweth him and unjustly detaineth, for that in Ireland, for the costs in error in B. R. there, and the costs in error in B. R. here. Costs on the judgment.
Salk. 469.
3 Salk. 144.
Holt 78.

Middlesex, to wit, *J. L.* gent. complaineth of *R. C.* esq; in the custody of the marshal of the *Marshalsea*, &c. of a plea, that he render to him 96 *l.* 4 *s.* and 3 *d.* which he render to him and unjustly detaineth, *for that* to wit, that *whereas* the said *J.* in the court of our sovereign lord *W. III.* now king of *England, Scotland, France and Ireland*, called the king's court in the kingdom of *Ireland*, before Sir *R. P.* knt. and his companions, then justices of our said lord the present king of the bench of his kingdom of *Ireland*, in the term of *St. Hilary* in the 6th year of the reign of our said lord the present king, by the consideration of the same court recovered against the said *R. C.* 33 *l.* 8 *s.* and 3 *d.* which were adjudged by the said court of our said lord the king of his bench in the said kingdom of *Ireland* to the said *J.* by his assent, for his damages, which he had as well by occasion of a certain trespass and ejectment of farm done by the said *R.* to the said *J.* as for his costs and charges by him about his suit in that behalf expended, whereof the said *R.* is convicted; as by the record and process remaining in the court of our said lord the present king, before the king himself here, *to wit*, at *W.* in the coun-

ty of *M.* which our said lord the present king for certain causes, caused to be transmitted into the same court of our said lord the present king, before the king himself; more fully appeareth: Which said judgment remaineth in the said court of our said lord the king, before the king himself here, *to wit*, at *W.* aforesaid in the county of *M.* aforesaid, in its full force and effect, no ways satisfied or discharged; and whereupon the said *J.* hath not yet sued out his execution for the said damages. *Whereupon* an *Assioaccrevit.* action accrued to the said *J.* to demand and have of the said *R.* the said 33 *l.* 8 *s.* and 3 *d.* parcel of the said 96 *l.* 4 *s.* and 3 *d.* *And also whereas* the said *J.* lately in the said court of our said lord the present king, before the said king himself, called the king's court in his kingdom of *Ireland*, by the consideration of the same court recovered against the said *R.* C. 18 *l.* 16 *s.* sterling, which were adjudged to the said *J.* for his costs and damages which he had sustained by occasion of the delay of execution of the said judgment, by pretence of prosecuting a certain writ of our said lord the king for correcting errors in the said judgment, and that the said *J.* should have his execution thereof, &c. as by the record and process of the same judgment last mentioned, remaining in the court of our said lord the present king, before the king himself here, *to wit*, at *W.* in the said county of *M.* which our said lord the king, for certain causes, caused to be transmitted into the said court of our said lord the king, before

Costs on affirmation in B.R. in Ireland.

Actio accrevit.

Costs on affirmation here.

before the king himself here, to wit, at *W.* in the said county of *M.* more fully appeareth: Which said last mentioned judgment also remaineth in the said court of our said lord the present king, before the king himself at *W.* aforesaid, in the said county of *M.* in its full force and effect, no ways satisfied or discharged; and the said *J.* hath not yet sued out his execution for the said 18 *l.* 16 *s.* for the aforesaid damages and costs last mentioned: *Whereupon* an action also accrued to the said *J.* to demand and have of the said *R.* the said 18 *l.* 16 *s.* other parcel of the said 96 *l.* 4 *s.* and 3 *d.* And also *whereas* the said *J.* lately in the court of our said lord the present king, before the king himself, to wit, in the term of *St. Hilary* in the ninth year of the reign of our said lord the present king, the said court then and still being at *W.* in the said county of *M.* by the consideration of the same court recovered against the said *R. C.* 44 *l.* which according to the form of the statute in such case made and provided were adjudged by the court of our said lord the present king, before the king himself then and there, to wit, at *W.* in the said county of *M.* to the said *J. L.* for his costs and damages which he sustained by occasion of the delay of execution of the said judgment, by the pretence of prosecuting a certain other writ of our said lord the king for correcting errors, and that the said *J. L.* should have his execution thereof, as by the record and process remaining in the said court of our said lord the

the present king, before the king himself here, to wit, at *W.* in the county of *M.* aforesaid, more fully appeareth: Which said last mentioned judgment remaineth in the said court of our said lord the present king, before the king himself at *W.* in the county of *M.* in its full force and effect, no ways satisfied or discharged: And the said *J.* hath not yet sued out his execution for the said 44*l.* for his said costs and damages last mentioned. *Whereupon* an action hath accrued *Actio accrevit.* to the said *J.* to demand and have of the said *R.* the said 44*l.* residue of the said 96*l.* 4*s.* and 3*d.* Yet the said *R.* altho' often requested, &c. hath not yet paid the said several sums of 33*l.* 8*s.* and 3*d.* 18*l.* 16*s.* and 44*l.* amounting in the whole to 96*l.* 4*s.* and 3*d.* to the said *J.* but hath hitherto refused, and still doth refuse to pay him the same, to the damage of the said *J.* of 20*l.* and thereof he bringeth suit, &c.

And the said *R. L.* by — his attorney, *Plea.* cometh and defendeth the force and injury when, &c. *And as to the* said 33*l.* 8*s.* and 3*d.* in the said declaration first mentioned, parcel of the said 96*l.* 4*s.* and 3*d.* the said *R.* saith, that the said *J.* ought not to have or maintain his said action thereupon against him, because he saith that there is not any such record of the recovery of the said 33*l.* 8*s.* and 3*d.* against the said *R.* as by his said declaration is above supposed; and this he is ready to verify. *And as to* the said 18*l.* 16*s.* in the said declaration secondly mentioned, other parcel of the said 96*l.*

As to the costs on the judgment, Nul tiel record.
As to the costs on the first affirmation, Nul tiel record.

*As to the costs
on the last af-
firmance, de-
murrer.*

*Causes of de-
murrer, those
costs not reco-
verable here.*

96*l.* 4*s.* and 3*d.* the said *R.* saith that the said *J.* ought not to have or maintain his said action thereupon against him, because he saith that there is not any such record of the recovery of the said 18*l.* 16*s.* against the said *R.* as by the said declaration is further also supposed; and this he is also ready to verify: *And as to* the said 44*l.* in the said declaration mentioned, residue of the said 96*l.* 4*s.* and 3*d.* the said *R.* saith that the said *J.* ought not to have or maintain his said action thereupon against him, because he saith, that the said declaration, as to the said 44*l.* and the matter therein contained, are not sufficient in law for him the said *J.* to have or maintain his said action thereupon against him for the same; to which said declaration, as to the said 44*l.* the said *R.* hath no need, and is not bound by the law of the land in any manner to answer; and this he is ready to verify: Wherefore for default of a sufficient declaration in this behalf the said *R.* prayeth judgment, and that the said *J.* may be barred from having his said action thereupon against him for the same, &c. *And* for causes of demurring in law in this behalf to the said declaration, as to the said 44*l.* the said *R.* according to the form of the statute in such case lately made and provided, sheweth and demonstrateth to the court here these causes following, to wit, that the said 44*l.* adjudged by the court of our said lord the king, before the king himself at *W.* to the said *J.* for his costs, charges and damages, by occasion of the delay of
execu-

execution of the said judgment, by pretence of prosecuting the said writ of error, by the law of the land of this kingdom of *England* are not recoverable in the said court of our said lord the king, before the said king at *W.* And that the said declaration, as to the said 44 *l.* is insensible, incertain, and wanteth form; and this the said *R.* is ready to verify; Wherefore he prayeth judgment of the said declaration; and that the said declaration, as to the said 44 *l.* may be quashed, &c.

And the said *J.* saith, that he, by any *Replication.* thing by the said *R.* above alledged in pleading, ought not to be barred from having his said action thereupon against the said *R.* because *as to* the said plea above pleaded in bar by the said *R.* as to the said 33 *l.* 8 *s.* and 3 *d.* in the said declaration above first mentioned, parcel of the said 96 *l.* 4 *s.* and 3 *d.* the said *J.* saith that there is such record of the recovery of the said 33 *l.* 8 *s.* and 3 *d.* against the said *R.* remaining in the said court of our said lord the present king here, before the king himself, to wit, at *W.* in the county of *M.* aforesaid, as the said *J.* hath above declared thereupon; and this he is ready to verify by the said record, as the court of our said lord the present king here shall consider, &c. *Habetur tale recordum.* And thereupon the said *J.* is bid *Day to bring in the record.* to have the said record before our said lord the king at *W.* on — next after — at his peril; The same day is given to the said *R.*

Habetur tale
recordum.

Day to bring
in the record.

Joinder in de-
murrer.

R. at the same place, &c. And as to the said plea above pleaded in bar by the said R. as to the said 18*l.* 16*s.* in the said declaration secondly mentioned, other parcel of the said 96*l.* 4*s.* and 3*d.* the said J. also saith, that there is such record of the recovery of the said 18*l.* 16*s.* against the said R. remaining in the said court of our said lord the king before the king himself here, to wit, at W. in the said county of M. as the said J. hath above thereupon declared; and this he is also ready to verify by the said record, as the court of our said lord the present king here shall consider, &c. And upon this the said J. is bid also to have the said record before our lord the king at W. on — next after — at his peril: The same day is given to the said R. at the same place, &c. And as to the said matter above alledged by the said R. to quash the said declaration of the said J. as to the said 44*l.* in the said declaration last mentioned, residue of the said 96*l.* 4*s.* and 3*d.* the said J. saith, that by any thing before alledged the said declaration of the said J. as to the said 44*l.* ought not to be quashed, because he saith that the said declaration as to the said 44*l.* and the matter therein contained, are good and sufficient in law for him the said J. to have and maintain his said action thereupon against the said R. for the same; Which said declaration as to the said 44*l.* and the matter therein contained, the said J. is ready to verify and prove, as the court, &c. And because the said R. doth not answer

swer to the said declaration as to the said 44*l.* and hath not as yet any ways denied the same, the said *J.* prayeth judgment, and his said debt as to the said 44*l.* together with his damages by occasion of the detaining that debt to be adjudged to him, &c. *But Continuance* because the court of our said lord the present king here is not yet advised of giving their judgment of and upon the premisses, day is therefore given to the parties aforesaid, before our lord the king at *W.* until — next after —, to hear their judgment of and upon the said premisses, for that the court of our said lord the present king here is not yet, &c.

London, to wit, *I. F. N.* and *J. F. N.* Declaration in complain of *G. D.* esq; otherwise the right debt on a bond honourable *G. marquis D.* being in the custody of the marshal of the *Matshalsea* of our lord the king, before the king himself, of a deed for performance of an plea that he render to them 17,100*l.* of law- that deed. B.R. ful money of *G. B.* which he oweth them and unjustly detaineth; For that, to wit, that whereas, by a certain writing or agreement made at *L.* aforesaid, to wit, in the parish of, &c. on the 29th day of *August* in the year of our Lord 1720. reciting, that whereas the said *I.* and *J.* for the consideration in the said writing mentioned, had bargained and sold to the said *G.* 900*l.* interest or credit in the principal capital stock and fund of the governor and company of merchants of *Great Britain*, trading to the *South Seas* and other parts of *America*, and for encouraging

couraging the fishery, &c. Which said 900 *l.* stock they the said *I.* and *J.* for themselves, their executors, administrators and assigns, covenanted, promised and agreed to transfer, or cause to be transferred, to the said *G.* his executors, administrators or assigns, within fourteen days next after the opening of the transfer-books after the *Christmas* dividend next ensuing the date thereof; and the said *G.* by the said writing covenanted, promised and agreed for himself, his executors and administrators, on the transferring the said 900 *l.* stock, to pay, or cause to be paid, to the said *I.* and *J.* their executors, administrators or assigns, for the said stock, the sum of 8550 *l.* of lawful money of *G. B.* and by the said writing it is mentioned that it was mutually agreed by and between the said parties, that the last *Midsummer* dividend, and all other dividends, profits and commodities whatsoever, which should arise or become due upon account of the said 900 *l.* stock, should be and remain to and for the proper use, benefit and advantage of the said *G.* his executors, administrators and assigns. And for the true observance and performance of the said agreement on the part of the said *G.* to be performed, the said *G.* by the said writing bound himself, his heirs, executors and administrators, to the said *I.* and *J.* their heirs, executors and administrators, in the penal sum of 17,100 *l.* as by the said writing, *which* the said *I.* and *J.* under the seal of the said *G.* bearing date the same 29th day of *August* in the year
 afore-

Profert.

aforesaid, bring here into court, more fully appeareth. *And* the said *I.* and *J.* in fact *Averment.* say, that the said transfer-books, after the *Christmas* dividend made by the company next after the date of the said writing, were opened upon the 1st day of *May* in the year of our Lord 1721. at *L.* aforesaid; and that the said *I.* and *J.* within 14 days next after the opening the said books, that is to say, on the 12th of day *May* in the year of our Lord 1721. the said 12th day being a transfer day from eleven of the clock in the forenoon until one of the clock in the afternoon of the same day, at the office of the said company, in a certain room called the transfer-room, at *L.* aforesaid, were ready to transfer to the said *G.* the said 900 *l.* stock in the transfer books of the said company, and then and there offered to transfer the said 900 *l.* to the said *G.* in the said books, but neither the said *G.* nor any one on this behalf then came or was present to accept the said stock; nor did the said *G.* then or at any other time pay to the said *I.* and *J.* or to either of them, the said 8550 *l.* for the said stock, according to the said agreement. *And* the said *J.* and *J.* say, that the usual manner of transferring stock in the capital stock or fund of the governor and company aforesaid, was on the same 12th day of *May* and long before had been, by transferring such stock in the said books at the said office, in the room aforesaid, on transfer-days, at any time between nine of the clock in the forenoon and one of the clock in the afternoon;

whereby an action accrued to the said *I.* and *J.* to demand and have of the said *G.* the said 17,100 *l.* Nevertheless the said *G.* altho' often requested, hath not paid the said 17,100 *l.* or any part thereof, to the said *I.* and *J.* or either of them, but hath intirely refused, and doth still refuse to pay the same to them, to the damage of the said *I.* and *J.* of 100 *l.* And thereof they bring suir, &c.

Plea, Non
debet.

And the said *G.* by *J. H.* his attorney cometh and defendeth the wrong and injury when, &c. and saith that he doth not owe to the said *I.* and *J.* the said 17,100 *l.* or any part thereof, in manner and form as the said *I.* and *J.* above complain against him; and of this he putteth himself upon the country: And the said *I.* and *J.* do the like. Therefore, &c.

Issue.

Declaration in
debt on the sta-
tute 21 Hen.
8. c. 13. for
non residence.
I. ill. Ent. 151.

R. F. who as well, &c. complaineth of *W. C.* in the custody of the marshal, &c. of a plea, that he render to our said lord the king, and to the said *R.* who as well, &c. 70 *l.* of lawful money of *England*, which he oweth to our said lord the king, and to the said *R.* who as well, &c. and unjustly detaineth, For that, that the said *W.* on the 1st day of *April* in the 4th year of the reign of our said lord the present king, and from that time continually afterwards, for the space of one whole year thence next ensuing, was and continued a spiritual and beneficed person, to wit, the said *W.* for the whole time afore-said was and still is vicar of the vicarge of the p. rochial church of *M.* and beneficed in the same; and that the said *W.* for seven months

months together, in the year aforesaid, to be computed from the first day of *May* in the same year, was not personally resident or abiding at or on his said vicarage, nor in, at or upon any other his benefice, but the said *W.* voluntarily absented himself the said seven months from his said vicarage, and was not resident upon his said vicarage, nor in, at or upon any other benefice, contrary to the form of the statute in such case made and provided: *Whereby* an action accrued to the said *R.* who as well, &c. to demand and have of vit. the said *W.* 70 *l.* to wit, 10 *l.* for every month committed by the said *W.* as aforesaid contrary to the form of the said statute. Yet the said *W.* although often requested, &c. hath not yet paid the said 70 *l.* to our said lord the king, and to the said *R.* who as well, &c. but hath hitherto intirely refused, and still doth refuse to pay them the same: Wherefore the said *R.* who as well, &c. saith that he is injured, and hath damage to the value of 20 *l.* and thereof as well for our said lord the king as for himself he bringeth suit, &c.

Leicestershire, to wit, Sir *N. C. bart.* com- *Declaratio*
plaineth of *W. F. esq;* in the custody of the *debt for re.*
marshal of the *Marshalsea* of our lord the
king and lady the queen, before the said king
and queen, of a plea that he render to him
280 *l.* of lawful money of *England*, which
he oweth him and unjustly detaineth; *for that*,
to wit, that *whereas* the said Sir *N.* on the
24th day of *March* in the fourth year of the
reign of our late sovereign lord *James II.* late
king

king of *England*, &c. at *F.* in the county
aforesaid, had demised, granted, and to farm
let, unto the said *W.* the several closes or
parcels of land of the said Sir *N.* following,
to wit, the west meadow at the end of the
mill, the *Mill's close*, otherwise *Mile's close*,
the *Hall-close*, the *Red-field*, the *Lilly-close*,
the *Gate close*, the *Warren*, the *Furzy-close*,
the *Middle-close*, and the *Highbway-close* lying
and being in *F.* aforesaid in the county afore-
said; *To have* and to hold the said several
closes or parcels of land, with the appurte-
nances, to the said *W.* and his assigns, from
the said 24th day of *March* in the fourth
year aforesaid, unto the end and term of one
whole year thence next ensuing and fully to
be complete and ended: *Yielding* and paying
therefore to the said Sir *N.* and his assigns
the rent or sum of 280 *l.* of lawful money
of *England*. *By virtue* of which said demise
the said *W.* entered into the said tenements
with the appurtenances, and was possessed
thereof, and had, held and occupied the said
tenements with the appurtenances. *And* the
said 280 *l.* for the said year ended at the
feast of the annunciation of the blessed virgin
Mary, in the first year of the reign of our
sovereign lord and lady *W.* and *M.* now king
and queen of *England*, &c. were and still
are in arrear and unpaid: *Whereby* an action
accrued to the said Sir *N.* to demand and
have of the said *W.* the said 280 *l.* *Yet* the
said *W.* altho' often requested, &c. hath not
yet paid the said 280 *l.* to the said Sir *N.*
but hath hitherto intirely refused, and still
doth

Habendum.

Reddendum.

Defendant
entered.

Rent arrear.

Actio accre-
vit.

doth refuse to pay him the same, to the damage of the said Sir N. of 100*l.* And therefore he bringeth suit, &c.

And the said *W.* by ——— his attorney ^{Plea Nil habuit in tenementis.} cometh and defendeth the force and injury when, &c. and saith that the said Sir N. at the time of the said demise in the said declaration mentioned, had nothing in the said tenements whereof he was able to make the said demise; and this the said *W.* is ready to verify: Wherefore he prayeth judgment if the said Sir N. ought to have or maintain his said action thereupon against him, &c. <sup>3 Lev. 193, 146
2 Vent. 251.
Pract. Reg. 214.
Townsh. tabl. 149.</sup>

And the said Sir N. saith, that he by any thing by the said *W.* above in pleading alleged, ought not to be barred from having his said action thereupon against him; ^{Replication.} because he saith that heretofore, to wit, in the term of St. Michael in the 32d year of the reign of our late sovereign lord Charles II. late king of England, &c. one Sir J. C. knt. and bart. deceased, in his life-time, in the court of Common Bench at *W.* before Sir F. N. and his companions, then justices of the said late king of the bench aforesaid, at *W.* in the county of *M.* by the consideration of the same court recovered against G. F. esq; by the name of G. F. of F. in the county of L. esq; as well a certain debt of 2000*l.* as 40*s.* which then in the said court of Common bench were adjudged to the said Sir J. C. for his damages which he had as well by occasion of the detaining that debt, as for his costs and charges by him about his suit in that behalf expended, whereof the said G. ^{Judgment in C.B. recovered by plaintiff's ancestor against defendant's ancestor.}

*Elegit prayed
and awarded.*

*Vic. non misit
breve.*

was convicted, as by the record and process thereupon remaining of record in the said court of Common Bench at *W.* more plainly appeareth; which said judgment was had and obtained for a true and just debt due to the said Sir *J. C.* by the said *G. F.* and then and still no ways paid or satisfied; and the said judgment had and obtained in form aforesaid, then remained in its full force and effect, no ways reversed, annulled or satisfied. *And* the said Sir *N.* further in fact saith, that the said Sir *J. C.* in his life-time afterwards, *to wit*, on the 28th day of *November* in that same term, came into the said court of Common Bench at *W.* aforesaid by *J. D.* his attorney, and by the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said *G.* except the oxen and beasts of his plough; and also a moiety of all his lands and tenements, to keep the said goods and chattels as his own proper goods and chattels, and also to hold the said moiety as his freehold to him and his assigns, according to the form of the said statute, until the said debt and damages should be thereof levied; and he prayed the writ of our late sovereign lord *Charles II.* late king of *England*, &c. to be directed to the sheriff of *L.* and it was granted to him, returnable in the same court of Common Bench at *W.* aforesaid on the octave of *St. Hilary*, &c. *At which day* the said Sir *J. C.* by his said attorney came into the same court, and the sheriff did nothing thereupon,

upon, and did not send the said writ. *There- Alias award- fore,* as before, another writ was made out *ed.* to him thereupon in form aforesaid, returnable in the same court on the morrow of the *Holy Trinity, &c.* At which day the said Sir *The return.* J. C. by his said attorney came into the said court, and the sheriff, *to wit,* J. D. esq; then returned there a certain inquisition taken before him at B. in the said county of L. on the 30th day of May then last past, by the oath of twelve, &c. by whom it was found that the said G. on the day of taking the said inquisition was seised in his demelne as of fee, of and in one close of pasture with the appurtenances in F. in the said county of L. called *Mile's close*, containing by estimation eight acres or thereabouts, then or late in the tenure or occupation of the said G. F. or his assigns, of the clear yearly value in all issues above reprises of 60 s. and of and in one other close of pasture with the appurtenances in F. aforesaid in the said county of L. called *Hall-close*, containing by estimation eighteen acres or thereabouts, then or late in the tenure or occupation of the said G. F. or his assigns, of the clear yearly value in all issues above reprises of 10 l. and of and in one other close of pasture with the appurtenances in F. aforesaid in the county aforesaid, called *Red-field*, containing by estimation 140 acres or thereabouts, then or late in the possession of the said G. F. or his assigns, of the clear yearly value in all issues above reprises of 40 l. and of and in one other close of pasture with the appurtenances in F. aforesaid

in the county aforesaid, called *Kilby-close*, containing by estimation sixty-eight acres of land or thereabouts, then or late in the tenure or occupation of the said G. F. or his assigns, of the clear yearly value in all issues above reprises of 30*l*. [*All the several parcels recited in the same manner*] and that the said close called *Mill's close* in F. aforesaid in the county aforesaid, the said close called *Hall's close*, the said close called *Redfield*, the said close called *Kilby*, the said close called the *Gate-close*, the said close called the *Warren*, the said close called the *Furzy-close*, the said close called the *Middle-close*, the said close called the *Highway-close*, the said close called the *West-meadow* at the end of the mill, being all in the occupation of the said G. F. or his assigns, and lying and being in F. aforesaid in the said county of L. are one just and equal moiety of the said mesuages, lands and tenements. Which said moiety the said sheriff on the said day of taking the said inquisition, by virtue of the said writ so as aforesaid directed to him, caused to be delivered to the said Sir J. C. bart. to hold to him and his assigns as his freehold, until the said debt and damages should be fully levied as by the said writ he was commanded. And the said Sir N. further saith, that the several closes and parcels of land last mentioned, to wit, the *Mill's close*, the *Hall-close*, the *Redfield*, *Kilby-close*, the *Gate-close*, the *Warren*, the *Furzy-close*, *Middle-close*, *Highway-close*, the *west meadow* at the end of the mill, are the same closes in the said declaration above mentioned

A moiety of the lands delivered.

Which are the lands mentioned in the declaration.

mentioned to be demised to the said *W.* In- *Plaintiff's fa-*
 to which said closes with the appurtenances *ther entered.*
 the said Sir *J. C.* entered in his life-time by
 virtue of the said delivery, and was seised
 thereof as of his freehold until, &c. *And Made his will,*
 being so thereof seised, the said Sir *J. C.* *and plaintiff*
 afterwards, *to wit,* on the 1st day of *Decem-* *executor, and*
ber in the year of our Lord 1686. at *L.* in *died.*
 the county of *L.* aforesaid, made his testa-
 ment and last will in writing, and by the
 same constituted and appointed the said Sir
N. executor of his said testament, and after-
 wards died there so seised as aforesaid. *After Plaintiff pro-*
 whose death the said Sir *N.* proved the said *ved the will*
 testament of the said Sir *J.* in due form of *and entered.*
 law, and took upon him the burthen of the
 execution of the same: And the said Sir *N.*
 entered into the said closes last mentioned
 with the appurtenances, and was seised there-
 of as of his freehold until, &c. *And that at Debt and da-*
 the time of the demise in the said declarati- *mages not le-*
 on above-mentioned, or at any time after- *viewed.*
 wards, he had not levied the said debt and
 damages, or any part thereof. *And so the*
 said Sir *N.* saith, that he at the time of the *And so plain-*
 demise in the said declaration above menti- *tiff had a good*
 oned had a good and sufficient estate in the *estate to de-*
 said tenements with the appurtenances, where- *mise.*
 of he could make the said demise of the said
 tenements with the appurtenances to the said
W. And this he is ready to verify: Where-
 fore he prayeth judgment and his said debt,
 together with his damages by occasion of the
 detaining that act, to be adjudged to him,
 &c.

And

Rejoinder.

A prior judgment in Scacc. recovered by two strangers against defendant's ancestor.

And the said *W.* saith, that long before the recovery of the said judgment by the said Sir *J. C.* against the said *G. F.* mentioned in the replication of the said Sir *N.* to wit, in the term of the *Holy Trinity* in the 26th year of the reign of our late sovereign lord *Charles II.* late king of *England, &c.* one *W. B.* esq; and *W. R.* esq; then debtors of our said late sovereign lord *Charles II.* then king of *England, &c.* came into the court of Exchequer of our then said sovereign lord *Charles II.* at *W.* before the barons of the said Exchequer, on the 8th day of *July* in the same term, by *T. H.* then their attorney, and then complained by bill against the said *G. F.* by the name of *G. F.* esq; then present in court on the same day, of the plea that he should render to them 6000 *l.* which he owed them and unjustly detained, for that, to wit, that whereas the said *G. F.* on the last day of *May* in the 26th year of the reign of our said sovereign lord the late king at *L.* to wit, in the parish of *St. Mary le Bow* in the ward of *Cheap,* had borrowed of the said *W. B.* and *W. R.* the said 6000 *l.* to be paid to the said *W. B.* and *W. R.* when he should be thereunto afterwards required: Yet the said *G. F.* altho' often requested, had not then rendered the said 6000 *l.* to the said *W. B.* and *W. R.* but had intirely refused, and then did refuse to render the same to them or to either of them: Wherefore the said *W. B.* and *W. R.* then said that they were injured, and had damage to the value of 100 *l.* Whereby the said *W. B.* and *W. R.* were the

the less able to satisfy our said sovereign lord the then king the debts which they then owed to our said then lord the king, at his said Exchequer, as they said; and thereof they brought suit, &c. And they then found pledges for prosecuting, *J. D. and R. R.* And the said *G. F.* by *R. O.* then his attorney, came and defended the force and injury when, &c. and then prayed oyer of the said bill, and it was read to him, &c. Which being read and heard, the said *G.* then said that he could not deny the said action of the said *W. B.* and *W. R.* nor but that he owed to the said *W. B.* and *W. R.* the said 6000 *l.* in manner and form as the said *W. B.* and *W. R.* by their said declaration then declared against him. Therefore it was then considered by the barons there, that the said *W. B.* and *W. R.* should recover against the said *G. F.* their said debt, and also their damages by occasion of the detaining that debt to 30s. adjudged by the said court to the said *W. B.* and *W. R.* by their assent; and that the said *G. F.* should be in mercy, &c. as by the record and process thereupon remaining in the said court of Exchequer, of the said late king at *Westminster* more fully appeareth; which said judgment was had and obtained in form aforesaid, for a true and just debt then due, by the said *G. F.* to the said *W. B.* and *W. R.* and to this time no ways paid or satisfied; and the said judgment still remaineth in its full force and effect, no ways reversed, annulled or satisfied. And the said *W. B.* and *W. R.* said that they, the said *W.*

*By Cognovit
actionem.*

*Elegit prayd
and awarded.*

B.

B. and *W. R.* afterwards came into the court of Exchequer of the said late king, and by the statute in such case prescribed, chose to be delivered to them, all the goods and chattels of the said *G.* except the oxen and beasts of his plough, and also a moiety of all the lands and tenements of the said *G.* to keep the said goods and chattels as their own proper goods and chattels, and also to hold the said moiety as their freehold, to them and their assigns, according to the form of the said statute, until they should thereof levy the said debt and damages. Whereupon, afterwards, to wit, on the 29th day of *November* in the term of *St. Michael* in the 27th year of the reign of our said late sovereign lord *Charles* the second, late king of *England*, by the writ of the said late king, of *Elegit*, prosecuted for and upon the said judgment, directed to the said then sheriff of the county of *Leicester*, it was commanded to the said then sheriff of the county of *Leicester*, that without delay he cause to be delivered to the said *W. B.* and *W.* by a reasonable price and extent, all the goods and chattels of the said *G.* except the oxen and beasts of his plough, and also a moiety of all the lands and tenements in his bailiwick, whereof the said *G.* was seised on the morrow of the *Holy Trinity* in the 26th year of the reign of the said late king of *England*, &c. on which day the said judgment was given, or at any time afterwards, to keep the said goods and chattels as their own proper goods and chattels; and also to hold the said moiety as their

their freehold to them and their assigns according to the form of the said statute, until they should thereof levy the said debt and damages: And the said sheriff was commanded to make appear to the barons of the said Exchequer at *Westminster*, on the octave of the purification of the blessed virgin *Mary* then next ensuing, under his seal and the seals of them by whose oath he should make the said extent and appraisement, in what manner the said writ should be executed, together with the names of them, by whose oath he should make that extent and appraisement, and the said writ. *At which day,* *Return.* the said *W. B.* and *W. R.* came into the said court in their proper persons, and the sheriff, to wit, *W. C.* esq; then sheriff of the said county of *Leicester*, returned, that the said *G. F.* had no goods or chattels, in his bailiwick, whereof he could cause to be made the said debt or any part thereof: And he further returned upon the said writ, a certain inquisition, taken before him at the borough of *Leicester* in the said county of *Leicester*, on the 3d day of *February* in the 28th year of the reign of our said late sovereign lord king *Charles II.* by the oath of *E. B. T. H. &c.* [naming all the jurors] good and lawful men of his county, who being sworn and charged upon their said oath, said, that the said *G. F.* esq; in the said writ named, at the time of giving the said judgment specified in the said writ, to wit, on the morrow of the *Holy Trinity* in the 26th year of the reign of the said late king *Charles II.* the

Nulla bona.
An inquisition.
time

time of giving the said judgment, was seised, and then stood seised in his demesne as of fee, of and in one capital mesuage, with the appurtenances, situate, lying and being in *F.* in the county aforesaid, then in the tenure or occupation of the said *J. F.* or his assigns, of the clear yearly value in all issues above reprises of ten shillings, and of and in one close of pasture, with the appurtenances in *F.* aforesaid in the county aforesaid, called the *Barn-yard*, containing by estimation two acres, in the tenure or occupation of the said *G. F.* or his assigns, of the clear yearly value in all issues above reprises of ten shillings, and of and in one close of pasture with the appurtenances in *F.* aforesaid in the county aforesaid, called *Mill's close*, containing by estimation, &c. [*writing all the particulars*] Which said capital mesuage, with the appurtenances, the said close called *Barn-yard*, the said close called *Mill's close*, the said close called *Hall's close*, the said close called *Redfield*, the said close called *Kilby-close*, the said close called *Gate close*, the said close called the *Warren*, the said close called *Furzy-close* [*with some others recited*] with all and singular their appurtenances, are one equal moiety of all and singular the said demised mesuages, lands and tenements, which said moiety, he the said sheriff, on the day of taking the said inquisition by virtue of the said writ, caused to be delivered to the said *W. B.* and *W. R.* in the said writ mentioned, to hold to them and their assigns, as their freehold, until the debt and damages in

*Moiety of the
lands delivered.
ed.*

in the said writ named, should be thereof fully levied, as by the said writ he was commanded: And the said *W.* further saith, that the said sheriff further returned, [that the said jurors upon their said oath further said, that the said *G. F.* in the said writ mentioned had not, nor had on the day of taking the said inquisition and giving the said judgment, or at any time afterwards, any other or more mesuages, lands or tenements, or any goods or chattels in his bailiwick to the knowledge of the said jurors, or by any evidence shewn to them, as by the said writ, return and inquisition aforesaid, affiled of record in the said court of Exchequer of our said late lord king *Charles II.* more fully appeareth.] And the said *W. F.* further saith, *The lands delivered and the lands in the declaration the same.* that the several closes and parcels of land, to wit, the *Mile's close*, the *Hall's close*, the *Redfield*, the *Kilby-close*, the *Gate-close*, the *Warren*, the *Furzy-close*, the *Highway-close*, the *West meadow* at the bridge, the *West meadow* at the end of the *Middle-close*, parcel of the closes and tenements in the said inquisition mentioned, and by the said sheriff of the said county of *Leicester* delivered by the said inquisition to the said *W. B.* and *W. R.* to hold to them and their assigns, until they should fully levy the said debt and damages due to them, and the closes in the said declaration mentioned to be demised, by the said *Sir N.* to the said *W. F.* are one and the same closes, and not other nor different. *Into* which said closes, with the appurtenances, *The Plaintiffs in the action*

*entered before
the Plaintiff's
demise.*

*The one dies,
the survivor
holds jure ac-
crescendi.*

*Their debt not
levied.*

*And so plain-
tiff had no
title to demise.*

purtenances, the said *W. B.* and *W. R.* by virtue of the said delivery, before the demise in the said declaration mentioned to have been made by the said Sir *N.* to the said *W. F.* entered, and were seised thereof, as of their freehold until, &c. And being so seised thereof, the said *W. R.* afterwards, to wit, on the first day of *February* in the year of our Lord 1697, at *F.* aforesaid in the said county of *Leicester* died, and the said *W. B.* survived him, and held himself in by right of survivorship. And the said *W. F.* further saith, that neither the said *W. B.* and *W. R.* or either of them, in the life-time of the said *W.* had levied, nor had either of them levied the said debt and damages, neither hath the said *W. B.* since the death of the said *W. R.* yet levied the said debt and damages, but great part thereof, to wit, the sum of 5000 *l.* and more still remains due to the said *W. B.* no ways levied or satisfied. And so the said *W. F.* saith, that the said Sir *N.* at the time of the said demise, in the said declaration above-mentioned, had not a good and sufficient estate in the said tenements, with the appurtenances, out of which he could make the said demise of the said tenements, with the appurtenances, to the said *W. F.* And this the said *W. F.* is ready to verify: Wherefore the said *W. F.* (as before) prayeth judgment if the said Sir *N.* ought to have or maintain his said action against him.

And

And the said Sir N. saith, that the said *Surrejoinder,*
 judgment in form aforesaid had and obtained *That the judg-*
 by the said W. B. and W. R. against the said *ment was ob-*
 G. F. was had and obtained by fraud and *tained per*
 covin then before had between the said W. B. *fraudem.*
 and W. R. the said G. F. at F. aforesaid in
 the said county of *Leicester*, to defraud the
 said Sir N. and other creditors of the said G.
 of their true and just debts; and this he is
 ready to verify: Wherefore (as before) he
 prayeth judgment and his said debt, toge-
 ther with his damages, by occasion of the
 detaining that debt, to be adjudged to him,
 &c.

And the said W. saith, that the said judgment *Rebutter.*
 had and obtained in form aforesaid by
 the said W. B. and W. R. against the said *The judgment*
 G. F. was had and obtained for a true and just *was for a just*
 debt, due to the said W. B. and W. F. by *debt.*
 the said G. F. *Without* this, that the said *Traverse.*
 judgment had and obtained in form aforesaid,
 by the said W. B. and W. R. against the said
 G. F. was had and obtained by fraud and co-
 vin before had between the said W. B. and
 W. R. and the said G. F. to defraud the said
 Sir N. and other creditors of the said G. of
 their true and just debts, in manner and form
 as the said Sir N. hath above pleaded in sur-
 rejoining; and this he is ready to verify:
 Wherefore (as before) he prayeth judgment,
 and that the said Sir N. may be barred from
 having his said action thereupon against him
 the said W. &c.

*Surrebutter
maintains the
surrejoinder.*

Issue.

And the said Sir N. (as before), saith that the said judgment, in form aforesaid had and obtained by the said W. B. and W. R. against the said G. F. was had and obtained by fraud and covin before had between the said W. B. and W. R. and the said G. F. to defraud the said Sir N. and the other creditors of the said G. F. of their true and just debts, in manner and form as the said Sir N. hath above in sur-rejoining pleaded, at F. aforesaid in the county of Leicester aforesaid; and this he prayeth may be inquired of by the country: And the said W. F. doth so likewise, &c. Therefore let a jury thereupon come before our lord the king, and lady the queen, at Westminster, on next after and who neither, &c. to recognize, &c. because as well, &c. the same day is given to the parties aforesaid at the same place, &c.

*Declaration in
debt by baron
and feme ex-
ecutrix, for
rent due after
testator's
death.*

*The indenture
of lease.*

*Middlesex, to wit, Sir T. A. P. bart. and E. his wife, executrix of the testament and last will of Sir J. D. knt. of the Bath, her late father deceased, complaineth of Sir J. J. knt. otherwise lately called J. J. of Scotland-yard in the county of M. esq; in the custody of the marshal, &c. of a plea that he render to them 30*l.* of lawful money of England, which he unjustly detaineth from them for that, to wit, that whereas the said Sir J. D. in his life-time, to wit, on the twelfth day of November in the 19th year of the reign of our sovereign lord Charles II. now king of England, &c. at the parish of St. Martin in the fields in the said county of M. by his certain*

certain indenture made between the said Sir J. D. by the name of the honourable Sir J. D. knt. of the *Bath*, of the one part, and the said Sir J. J. by the name of J. J. of *Scotland-yard* in the county of M. of the other part, *the counterpart of which, sealed with Profert.* the seal of the said Sir J. J. the said Sir T. and E. bring here into court, the date whereof is on the same day and year aforesaid, had demised, granted, and to farm let, to the *Demise.* said Sir J. J. All those chambers, cellars, closets, kitchen, coal-house, coach-house, yard and piece of land, and other rooms of the said Sir J. D. then in the occupation of the said Sir J. J. and situate and being in *Scotland-yard* aforesaid, near *Whiteball* in the said parish of *St. Martin in the fields* in the county of M. aforesaid, together with all ways, passages, lights, easements and appurtenances to the same premisses belonging; *To Habendum.* have and to hold the said premisses, with the appurtenances, to the said Sir J. J. his executors, administrators and assigns, from the feast day of *St. Michael* the archangel then last past, until the full end and term of 30 years thence next ensuing and fully to be complete and ended; *Yielding and paying Reddendum.* therefore, during the first two years and three quarters of a year, of the said term of thirty years, to the said Sir J. D. his executors, administrators and assigns, the yearly rent of one pepper-corn, at the feast of *St. Michael* the archangel, if the same should be lawfully demanded; and yielding and paying also to the said Sir J. D. his execu-

*Defendant
entered.*

*Testator made
his will, and
plaintiff E.
executrix,*

and died:

*She proves the
will.*

*And marries
the plaintiff
Sir T.*

tors, administrators and assigns, during the residue of the said term of 30 years, the yearly rent of 60 *l.* of lawful money of *England*, at the feast of *St. Michael* the archangel, the nativity of our Lord God, the annunciation of the blessed virgin *Mary*, and the nativity of *St. John* the baptist; as by the said indenture amongst other things more fully appears; *By virtue* of which said demise the said Sir *J. J.* afterwards, to wit, on the 1st day of *January* in the 19th year aforesaid, entered into the premises aforesaid with the appurtenances, and was and still is possessed thereof. *And* the said Sir *J. D.* afterwards, to wit, on the 13th day of *March* in the year of our Lord 1668, in the said parish of *St. Martin in the fields* in the county of *M.* aforesaid, made his testament and last will in writing, and by the same constituted and appointed the said *E.* sole executrix thereof; and afterwards, to wit, on the 1st day of *May* in the year of our Lord 1670, at the said parish of *St. Martin in the fields* in the county of *M.* aforesaid died; after the death of which said *J. D.* she the said *E.* took upon her the execution of that testament, and afterwards, to wit, on the 9th day of *May* in the year of our Lord last aforesaid, at the said parish of *St. Martin in the fields* in the county of *M.* aforesaid, in due form of law proved the said will; and afterwards, to wit, on the 1st day of *May* in the 29th year of the reign of our said sovereign lord the present king, at the said parish of *St. Martin in the fields* in the county

county of *M.* aforesaid, married the said Sir *T.* And 30 *l.* for rent of the said premisses, *Rent arrear.* for half a year ended at the feast of the nativity of *St. John* the baptist last past, were in arrear to the said Sir *T.* and *E.* after the death of the said Sir *J. D.* and after the marriage between the said Sir *T.* and *E.* celebrated, and still are in arrear and unpaid: *Whereby* an action accrued to the said Sir *T.* *Actio accre-* and *E.* to demand and have of the said Sir *J. J.* *vit.* the said 30 *l.* Yet the said Sir *J. J.* altho' often requested, &c. hath not yet paid the said 30 *l.* to the said Sir *T.* and *E.* or to either of them, but to pay the same to them or to either of them hath intirely refused, and still doth refuse, and unjustly detaineth, to the damage of the said Sir *T.* and *E.* of 60 *l.* And thereof they bring suit, &c. And the said Sir *T. A. P.* and *E.* *Profert of the* bring here into court the letters testamen- *letters testa-* tary of the said Sir *J. D.* by which it is suf- *mentary.* ficiently appeareth to the court here, that the said *E.* is executrix of the said testament, &c.

Ejectment.

Friday next after the octave of the purification of the blessed virgin Mary in the fifteenth year of king George the second.

Rule by consent in ejectment by original. R. } I T is ordered by the consent of the
D. } attorneys of both parties, that J. B.
gent. W. G. T. R. S. L. T. G. and J. S. be
made defendants in the stead of the now defendant D. and do forthwith appear at the suit of the plaintiff, and receive a declaration in an action of trespass and ejectment for the premises in question, and forthwith plead thereto Not guilty; and upon the trial of the issue, confess lease, entry and ouster, and insist upon the title only; otherwise let judgment be entered for the plaintiff against the now defendant D. by default; and if upon the trial of the issue the said J. W. T. S. T. and J. shall not confess lease, entry and ouster, whereby the plaintiff shall not be able further to prosecute his writ against the said J. W. T. S. T. and J. then no cost shall be allowed for not further prosecuting the same; but the said J. W. T. S. T. and J. shall pay costs to the plaintiff in that case to be taxed: And it is further ordered, that if upon the trial of the said issue a verdict shall be given for the said J. W. T. S. T. and J. or it shall happen that the said plaintiff shall not further prosecute

prosecute his said writ for any other cause than for not confessing lease, entry and ouster, then the lessor of the plaintiff shall pay to the said J. W. T. S. T. and J. costs in that behalf to be adjudged.

By the court.

Error.

OUR lord the king sent to his trusty and well-beloved Sir J. W. knt. chief justice of the bench, his writ closed in these words, to wit, *George the second, &c.* To his trusty and well-beloved Sir J. W. knt. his chief justice of the bench, greeting. Forasmuch as in the record and process, and also in giving of judgment in a plaint which was in our court before Sir T. R. knt. late chief of our court of the bench, and his associates, our then justices of the said bench, by our writ, between T. K. and J. D. gent. of a plea of debt as it is said, manifest error hath intervened, to the great damage of the said J. as by his complaint we are informed; we willing that the said error, if any be, be duly amended, and full and speedy justice done to the said parties in this behalf, do command you, that if judgment be given thereupon, then you

Entry of a writ of error on a judgment in C. B.

The writ of error.

Error.

send to us distinctly and plainly under your seal the record and process of the said plaint, with all things touching the same, and this writ, so that we may have them from *Easter* day in fifteen days wheresoever we shall then be in *England*, that inspecting the record and process aforesaid we may cause further to be done thereupon for amending the said error, as of right and according to the law and custom of *England* shall be meet to be done. Witness Ourselves at *Westminster* the first day of *February* in the tenth year of our reign.

W. King.

The return. *The answer of J. W. kn. chief justice within named.*

THE record and process of the plaint within mentioned, with all things touching the same, I send before our lord the king wheresoever he be in *England*, at the day within contained, in a certain record to this writ annexed, as I am within commanded.

J. Willes.

Pas. 27 Car. 2. R. 396.

*Memorandum
of a bill of the
same term.*

London, BE it remembered, That on *Wednesday* next after fifteen days from the day of *Easter* in this same term, before the

the lord the king at *Westminster*, came *J. J.* by *R. B.* his attorney, and brought here into the court of the said lord the king then there, his certain bill against *E. G.* otherwise called *E. G. de Lyons inn in com. Midd. gener.* in the custody of the marshal, &c. of a plea of debt; and there are pledges for prosecuting, namely *John Doe* and *Richard Roe*; which said bill follows in these words, to wit, *London*, to wit, *J. J.* complains of *E.* Declaration in *G.* otherwise called *E. G. de Lyons inn in com.* debt on several *Midd. gener.* being in the custody of the bond. B. R. marshal of the *Marshalsea* of the lord the king, before the king himself, of a plea that he render to him four hundred pounds of lawful money of *England*, which he owes him, and unjustly detains; for that, to wit, that whereas the said *E.* on the 23d day of *May* in the 26th year of the reign of our sovereign lord *Charles* the second now king of *England*, &c. at *London*, to wit, in the parish of *St. Mary le Bow* in the ward of *Cheap*, by his certain writing obligatory, sealed with the seal of the said *E.* and to the court of our said lord the king now here shewn, the date whereof is on the same day and year, acknowledged himself to be held and firmly bound to the said *J.* in one hundred pounds, parcel of the said four hundred pounds, to be paid to the said *J.* when he should be thereunto requested: *And whereas* also the said *E.* afterwards, to wit, on the same twenty-third day of *May* in the twenty-sixth year aforesaid, at *London* aforesaid, in the parish and ward aforesaid by his certain other writing obligatory,

gatory, also sealed with the seal of the said *E.* and to the court of our said lord the king now here also shewn, the date whereof is on the same day and year, acknowledged himself to be held and firmly bound to the said *T.* in other one hundred pounds, also parcel of the said four hundred pounds, to be paid to the said *T.* when he should be thereunto requested: *And whereas* also the said *E.* afterwards, to wit, on the same twenty-third day of *May* in the twenty-sixth year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, by his certain other writing obligatory, also sealed with the seal of the said *E.* and to the court of our said lord the king now here also shewn, the date whereof is on the same day and year, acknowledged himself to be held and firmly bound to the said *T.* in other one hundred pounds, also parcel of the said four hundred pounds, to be paid to the said *T.* when he should be thereunto requested: *And whereas* also the said *E.* afterwards, to wit, on the same twenty-third day of *May* in the twenty-sixth year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, by his certain other writing obligatory, also sealed with the seal of the said *E.* to the court of our said lord the king now here also shewn, the date whereof is on the same day and year, acknowledged himself to be held and firmly bound to the said *T.* in other one hundred pounds, residue of the said four hundred pounds, to be paid to the said *T.* when he should be thereunto also requested: *Nevertheless* the said *E.* although often requested,

Ec. has not yet paid the said four hundred pounds to the said *T.* but hitherto to pay him the same has altogether refused, and still does refuse, to the damage of the said *T.* of twenty pounds: And thereupon he brings suit, *Ec.*

And the said *E. G.* by *E. M.* his attorney, *Judgment by non potest dedicare.* comes and defends the force and injury, when, *Ec.* and says, that he cannot deny the said action of the said *T.* nor but that he owes to the said *T.* the said four hundred pounds,

above specified in the said declaration, in manner and form as the said *T.* above has declared against him; *Therefore* it is considered that the said *T.* recover against the said *E.* his said debt, and also forty-one shillings for his damages which he has sustained, as well by the occasion of the detaining that debt, as for his costs and charges by him about his suit in this behalf expended, adjudged by the court of our said lord the king now here, to the said *T.* by his assent. And the said *E.* in mercy, *Ec.* *Afterwards*, to wit, on * *Saturday*

next after three weeks of *St. Michael* in the twenty-seventh year of the reign of our sovereign lord *Charles* the second now king of *England*, *Ec.* before our lord the king at *Westminster*, comes the said *E. G.* by *E. C.* his attorney, and brings here into the court then

and there a certain writ of our said lord the king, for correcting error of and upon the said judgment above specified; And prays that the said writ may be allowed; and it is al-

lowed

Writ of error coram nobis residen' brought.
1 Lev. 38.
1 Vent. 208.
3 Danv. Abr. 30. p. 16.

Allowed.

* No such return at this day. See *Vol. 1. p. 63.*

The writ.

lowed him by the same court; which said writ follows in these words, to wit, *Charles* the second, by the grace of God, of *England, Scotland, France and Ireland* king, defender of the faith, &c. To our justices assigned to hold pleas before us, greeting. Forasmuch as in the record and process, as also in giving of judgment of a plaint, which was in our court before us by bill between *T. T.* and *E. G.* otherwise called, &c. of a debt of four hundred pounds, which the said *T.* demands from the said *E.* as it is said, which said record and process is remaining before us, manifest error hath intervened, to the great damage of the said *E.* as by his complaint we are informed; we, willing that the said errors, if any be, be duly amended, and full and speedy justice done to the said parties in this behalf, do command you, that viewing the record and proceedings aforesaid, you cause further to be done therein for correcting the said error, as of right and according to the law and custom of our kingdom of *England* shall be to be done. Witness Ourselves at *Westminster* the twenty-third day of *October* in the twenty-seventh year of our reign. And thereupon afterwards it is considered by the court of our said lord the king now here, that the said writ of error, for want of prosecution thereupon on the part of the said *E.* be altogether superseded, &c. And afterwards, to wit, on *Tuesday* next after three weeks of the *Holy Trinity*, before our said lord the king at *Westminster*, came the said *E.* by his attorney aforesaid, and also brings here into the court then and there,

Superseded for want of prosecution.

Another writ brought.

there, a certain other writ of our said lord the king, for correcting error of and upon the said judgment above specified; *And also* And allowed. prays that the said writ may be allowed; and by the same court here it is allowed to him, &c. which said other writ follows in these words, to wit, *Charles the second, [in the same* The writ. *words as the former writ.]* Witness Ourselves at *Westminster* the seventh day of *June* in the twenty-eighth year of our reign. *And upon* Error assigned, this the said *E.* then and there in the same that the defend- court here says, that in the record and process dant appeared *aforsaid*, as also in giving the said judgment, by attorney, there is manifest error in this, to wit, that and was under where by the said record it appears, that he the age of the said *E.* in the term of *Easter* in the twenty- years. *seventh* year of the reign of our said lord the present king, appeared at the suit of the said *T. T.* in the plea *aforsaid*, by *E. M.* his attorney, in the said court of our said lord the king, before the king himself now here, he the said *E.* at the said time of such appearance of him the said *E.* was within the age of twenty-one years, to wit, of the age of twenty years and six months, and not more, to wit, at *London* *aforsaid*, in the parish and ward *aforsaid*. In which case he the same *E.* by the law of the land of this kingdom of *England*, ought to have appeared in the said plea at the suit of the said *T. T.* by his guardian or his next friend, and not by his attorney. *Therefore* in this there is manifest error, and Sci. fa. ad au- this the said *E.* is ready to verify. *Wherefore* diend. record. he prays the writ of our lord the present king et process. to warn the said *T. T.* to be before our lord

the king to hear the said record and process, if, &c. and it is granted to him, &c. by which it is commanded to the sheriffs of *London*, that by good, &c. they make known to the said *T. T.* that he be before our lord the king * from the day of *St. Michael* in three weeks wheresoever, &c. to hear the record and process aforesaid, if, &c. The same day is given to the said *E. &c.* At which day before our lord the king at *Westminster* aforesaid, came the said *E.* by his attorney aforesaid, and the sheriffs of *London*, namely *Sir T. S. knt.* and *Sir J. P. knt.* return that the said *T. T.* has nothing in their bailiwick where or by which they are able to make known to him, nor is he found in the same. And he does not come.

Therefore, as before, it is commanded to the same sheriffs of *London* that by good, &c. they make known to the said *T. T.* that he be before our lord the king * on the morrow of *St. Martin* wheresoever, &c. to hear the record and process aforesaid, if, &c. and further, &c. The same day is given to the said *E. &c.*

At which day, before our lord the king at *Westminster* aforesaid, comes the said *E.* by his attorney aforesaid, and the said sheriffs of *London* return that the said *T.* has nothing in their bailiwick where or by which they are able to make known to him, nor is he found in the same. Which said *T.* according to the warning made to him in this behalf also comes by *R. B.* his attorney, upon which the said

Return nihil.

Alias sci. fa.

Return nihil.

Defendant in error appears.

* No such return at this day. See *Vol. 1. p. 63.*

said *E.* (as before) says that in the record and process aforesaid, as also in giving the said judgment, there is manifest error, by alledging the error aforesaid in form aforesaid alledged; and prays, that the said judgment for the error aforesaid may be reversed, and altogether held for naught; and that he may be restored to all things which he has lost, by occasion of the said judgment; and that the said *T.* may rejoin to the said error above assigned, &c. And the said *T. T.* says, that by any reason of the said error by the said *E.* above assigned, the said judgment ought not to be reversed, annulled, or altogether held for naught, because he says that the said *E. G.* at the time of the appearance of the said *E.* at the suit of the said *T.* in the plea aforesaid, in the said term of *Easter*, to wit, on *Wednesday* the twenty-first day of *April* in the said twenty-seventh year of the reign of our said lord the present king, was of the full age of twenty-one years and more, and not within the age of twenty-one years, as the said *E.* above has alledged thereupon for error, to wit, at *London* aforesaid, in the parish and ward aforesaid. And of this he puts himself upon the country. And the said *E.* thereupon also, &c. Therefore it is commanded to the sheriffs, that they cause to come before our lord the king, from the day of *St. Hilary* in fifteen days, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid, &c.

Rejoinder that plaintiff in error was of full age.

Issue.
Venire facias.

After-

Process continued.

Death of the King.
Nisi prius.

Postea.

Tales.

Afterwards the process is thereupon continued between the parties aforesaid, in the plea aforesaid, by the jury between them being respited before our lord the king, until on the octave of St. *Hilary* wheresoever, &c. in the second year of the reign of our sovereign lord *James* the second, king of *England*, &c. before which said octaves of St. *Hilary* his late majesty *Charles* the second, late king of *England*, &c. died; unless Sir *E. H.* knight, chief justice of our said lord *James* the second, now king of *England*, &c. assigned to hold pleas in the court of the said lord the king, before the king himself, shall come before on *Wednesday* the first day of *December*, at the *Guildhall* of the city of *London* aforesaid, by form of the statute, &c. for default of the jurors, &c. *At which day*, before our lord the king at *Westminster*, the said parties came by their attornies aforesaid, and the said chief justice, before whom, &c. sent here his record before him had in these words, to wit, *Afterwards*, at the day and place within contained, before the king's trusty and well-beloved Sir *E. H.* knight, the chief justice within written having associated to him *R. P.* gent. by form of the statute, &c. comes as well the within-named *E. G.* as the within-written *T. T.* by their attornies within contained, and the jurors of the jury whereof mention is within made being demanded, some of them, namely, *N. D. L. B. F. B. P. H. J. P. H. W. E. F. N. B. J. P.* and *S. T.* came and were sworn upon the said jury; and because the residue of the

the jurors of the same jury did not appear, therefore others of those standing around, thereunto chosen by the sheriffs of *London* within-written, at the request of the said *E.* and by the command of the said chief justice, are added anew, whose names are affixed in the within-written panel, according to the form of the statute in such case made and provided; and the jurors so added anew, namely, *T. S.* and *J. W.* being demanded, also came, who, to speak the truth of the within-contained, together with the said other jurors before impanelled and sworn, were chosen, tried and sworn, and retired from the bar here to discourse together about giving their verdict thereupon; and having discoursed together, and agreed to give their verdict thereupon, came back to the bar here. *Upon which Plaintiff non-suited.* the said *E.* although solemnly called, came not again, nor did he further prosecute his said writ against the said *T. T.* *Therefore it Judgment.* is considered, that the said *T. T.* go thereupon without day, &c. *And upon this afterwards, to wit, on Monday next after the octave of St. Hilary in the term of St. Hilary in the second and third years of the reign of our said lord James the second, king of England, &c. before the said lord the king at Westminster, came the said E. G. by W. B. his attorney, and brought here into the court of the said lord the king then there a certain other writ, for correcting error of and upon the said original judgment, directed to the justices of our said lord the king, assigned to hold pleas*

Vol. II. A a in

*Allowed.**The writ.*

in the court of our said lord the king, before the king himself; and prays, that the said writ may be allowed; and it is allowed by the said court here, &c. which said writ follows in these words, to wit, *James* the second, [as in the former to] as also in giving of judgment of a plaint, which was in the court of the lord *Charles* the second, late king of *England*, before the said late king by bill, [as in the former to] Witness Ourself at *Westminster* the twenty-fourth day of *January* in the second year of our reign.

*Layton.**Error assigned as before.*

Upon which the said *E.* by his said attorney says, that in the record and process aforesaid, as also in giving the said judgment, there is manifest error in this, to wit, that where by the said record it appears, that the said *E.* in the term of *Easter* in the twenty-seventh year of the reign of the lord *Charles* the second, late king of *England*, &c. appeared at the suit of the said *T. T.* in the said plea, by *E. M.* his attorney, in the said court of the said late king, before the said late king, he the said *E.* at the said time of such appearance of him the said *E.* was within the age of twenty-one years, to wit, of the age of twenty years, and not more, to wit, † at the city of *Exeter*, in the county of the said city: In which case, he the said *E.* by the law of the land of this kingdom of *England*, ought to have appeared in the said plea at the suit of the said *T. T.* by his

† Note; the venue now laid at *Exeter*, before at *London*.

his guardian, or by his next friend, and not by his attorney. Therefore in that there is manifest error. And this the said *E.* is ready to verify. Wherefore he prays the writ of the lord the present king to warn the said *T. T.* to be before our lord the king to hear the said record and process, if, &c. and it is granted to him, &c. by which it is commanded to the sheriffs of *London*, that by good, &c. they make known to the said *T. T.* that he be before our lord the present king from

Scire facias ad
audiend. re-
cord. et pro-
cess.

&c. to hear the said record and process, if, &c. The same day is given to the said *E.* &c.

Jo. Tremayne.

At which day, before the lord the king at *Westminster*, came the said *E.* by his attorney aforesaid, and the said sheriffs of *London*, namely, Sir *T. F.* knt. and Sir *T. R.* knt. return that the said *T. T.* has nothing in their bailiwick, where or by which they can make known to him, neither is he found in the same, and he does not come. Therefore, as before, it is commanded to the said sheriffs of *London*, that by good, &c. they make known to the said *T. T.* that he be before our lord the king from the day of *Easter* in five weeks wheresoever, &c. to hear the record and process aforesaid, if, &c. And further, &c. The same day is given to the said *E.* &c. At which day, before our lord the king at *Westminster*,

Return nihil.

Alias sci. fa.

Return nihil.

fter, came the said *E.* by his attorney aforefaid, and the sheriffs of *London*, to wit, Sir *T. F.* knt. and Sir *T. R.* knt. as before, return that the said *T. T.* has nothing in their bailiwick, where or by which they can make known to him, neither is he found in the same. And he on the fourth day of the plea solemnly called came not, but made default. *But* because the court of our lord the king now here is not yet advised about giving their judgment of and upon the premisses, day is thereupon given to the said *E.* before our lord the king, until on the morrow of the *Holy Trinity*, wherefoever, &c. to hear their judgment thereupon, for that the court of our said lord the king here is not yet, &c. The same day is given to the said *E.* &c.

Continuance.

*Error coram
vobis brought.*

Afterwards, to wit, on the twenty-eighth day of *November* in the third year of the reign of our sovereign lord *George* the second, now king of *Great Britain*, &c. (before which day the lord *George* late king of *Great Britain*, &c. departed this life) before the said lord *George* the second at *Westminster*, come *Mary Tyler* by *Edward Halsted* her attorney, And *Nathaniel King* being an infant under the age of twenty-one years, by *Edward Sparkes* his guardian, by the court of our lord the present king here specially admitted, and bring here into the court of the said lord the present king, a certain writ of the same lord the present king for correcting errors of and upon the premisses aforefaid; and pray that the said writ by the court of our lord the present king

king may be allowed; and by the same court here it is allowed: Which said writ follows in these words, to wit, *George, &c.* [the writ of *Error*] upon which the said *Mary Tyler* and *Nathaniel King* say, that in the record and proceedings aforesaid, and also in giving the said judgment, there is manifest error in this, that is to say, that by the record aforesaid it appears, that the said *John Long*, on *Friday* next after the morrow of the *Holy Trinity* in the said term of the *Holy Trinity* in the tenth year of the reign of our lord *George* the first, late king of *Great Britain, &c.* came before the said late king *George* the first at *Westminster* aforesaid, by *Richard Cromwell* his attorney, and brought into the said court of the said late king before the said late king his bill against the said *Mary Tyler* and *Nathaniel King* in form aforesaid in the plea aforesaid; And that the said *Mary Tyler* and *Nathaniel King*, on the said *Friday* next after the morrow of the *Holy Trinity* in the said term of the *Holy Trinity*, also came into the same court of the said late king before the said late king, by the said *Adrian Moore* their attorney, and defended the force and injury, when, *&c.* and said, that they were not guilty of the said trespass and ejectment of farm as the said *John Long* above complained against them: And of this they put themselves upon the country; and it was in such manner in the same court of the said late king before the said late king proceeded in the plea aforesaid, that the said judgment in form aforesaid was given against

Allowed.

Error assigned that one of the plaintiffs in error and defendants in the original action was an infant, and appeared by attorney and not by guardian.

them the said *Mary Tyler* and *Nathaniel King*. And the said *Mary Tyler* and *Nathaniel King* say, that he the said *Nathaniel King*, on the said *Friday* next after the morrow of the *Holy Trinity* in the said term of the *Holy Trinity* in the said tenth year of the reign of the said late king *George* the first, and at the said time of the appearance of them the said *Mary Tyler* and *Nathaniel King* in the said court of the said late king before the said late king, by *Adrian Moore* their attorney made, and also at the time of rendering the said judgment in form aforesaid, was within the age of twenty and one years, to wit, at the parish of *St. Thomas the Apostle* in the county of the city of *Bristol* aforesaid; in which case the said *Nathaniel King* ought to have come and pleaded by his guardian and not by his attorney, in manner and form aforesaid: Therefore in this there is manifest error, and this they are ready to verify; And they pray that the said judgment, for that error being in the said record and process, may be reversed, annulled and intirely held for nothing; and that they may be restored to all that they have lost by occasion of the said judgment, &c. And the said *Mary* and *Nathaniel* pray the writ of our said lord the king to be directed to the sheriff of the city of *Bristol*, to summon the said *John Long* to be before our lord the king to hear the said record and process: And it is granted, and by which said writ it is commanded to the sheriff of the said city of *Bristol*, that by good, &c. of his bailiwick he make known to the said *John Long* that he be before our lord

Scire fa.
prayed.

lord the king at *Westminster* on *Friday* next after the octave of *St. Hilary*, to hear the said record and process, if, &c. And further, &c. The same day is given to the said *Mary* and *Nathaniel* at the same place, &c. At which day before our lord the king at *Westminster* came the said *Mary* by her attorney aforesaid, and the said *Nathaniel King* by his guardian aforesaid; And the sheriff of the city of *Bristol* aforesaid did not send there-
 upon the said writ, nor do any thing there-
 upon: Therefore as at first it is commanded to the sheriff of the city of *Bristol* aforesaid, that by good, &c. of his bailiwick he make known to the said *John*, that he be before our lord the king at *Westminster* on *Wednesday* next after fifteen days of *Easter*, to hear the record and process aforesaid, if, &c. and further, &c. The same day is given to the said *Mary* and *Nathaniel* at the same place, &c. At which day before our lord the king at *Westminster* came the said *Mary* by her attorney aforesaid, and the said *Nathaniel* by his guardian aforesaid; And the sheriff of the said city of *Bristol* did not send thereupon the said writ, nor did he do any thing thereupon: Therefore as at first it is commanded to the sheriff of the said city of *Bristol*, that by good, &c. of his bailiwick he make known to the said *John*, that he be before our lord the king at *Westminster*, on *Friday* next after three weeks of the *Holy Trinity*, to hear the record and process aforesaid, if, &c. and further, &c. The same day is given to the said *Mary* and *Nathaniel* at the same place, &c. At which day before our lord the king

Vic. non misit breve.

Alias sci. fa.?

Vic. non misit breve.

Plur. sci. fa.?

Vic. non misit
breve.

Plur. sci. fa.*

Defendant in
error appears,
and says that
the said plain-
tiff in error
was of full
age.

at *Westminster* came the said *Mary Tyler* by her attorney aforesaid, and the said *Nathaniel King* by his guardian aforesaid: And the sheriff of the city of *Bristol* aforesaid did not send thereupon the said writ, nor did he do any thing thereupon: Therefore as at first it is commanded to the sheriff of the said city of *Bristol*, that by good, &c. of his bailiwick, &c. he make known to the said *John* that he be before our lord the king at *Westminster* on * *Friday* next after three weeks of *St. Michael*, to hear the record and process aforesaid, if, &c. and further, &c. The same day is given to the said *Mary* and *Nathaniel* at the same place, &c. At which day before our lord the king at *Westminster* came the said *Mary* by her attorney aforesaid, and the said *Nathaniel* by his guardian aforesaid: And the said *John* by *Richard Cromwell* his attorney comes freely here into court and says, that by any thing by the said *Mary* and *Nathaniel King* above for error assigned, the said judgment ought not to be reversed or annulled, because he says that the said *Nathaniel*, on the said *Friday* next after the morrow of the *Holy Trinity* in the said term of the *Holy Trinity*, in the said tenth year of the reign of the said late king *George* the first, and at the time of the appearance of them the said *Mary* and *Nathaniel King* in the said court of the said late king before the said late king, by *Adrian Moore* their attorney, and also

* No such return. See *Vol. 1. p. 63.*

also at the time of giving the said judgment in form aforesaid, was of the full age of twenty and one years and more, and not under age in manner and form as the said *Mary Tyler* and *Nathaniel King* have above alledged: And of this he puts himself upon the country; and the said *Mary* and *Nathaniel* likewise: Therefore let a jury come thereupon *Issue.* before our lord the king at *Westminster* on *Ven. fac.* *Saturday* next after the octave of *St. Hilary*, who neither, *&c.* to recognize, *&c.* because as well, *&c.* The same day is given to the parties aforesaid at the same place, *&c.* At which day before our lord the king at *Westminster* came as well the said *Mary* by her attorney aforesaid, and the said *Nathaniel* by his said guardian, as the said *John* by his attorney aforesaid; And the sheriffs of the *Vic. non miser' breve.* county of the city aforesaid did not send thereupon the said writ, nor did they do any thing thereupon: Therefore as at first *Alias Ven. fa.'* let a jury thereupon come before the lord the king at *Westminster* on *Wednesday* next after fifteen days of *Easter*, and who neither, *&c.* to recognize, *&c.* because as well, *&c.* The same day is given to the parties aforesaid, at the same place, *&c.* At which day before our lord the king at *Westminster* came as well the said *Mary* by her attorney aforesaid, and the said *Nathaniel* by his guardian aforesaid, as the said *John* by his attorney aforesaid; *Vic. non miser* And the sheriffs of the county of the said *breve.* city did not send thereupon the said writ, nor did they do any thing thereupon: Therefore *Plur. Ven. fa.'* as at first let a jury come thereupon before our

Returned
executed.

Jury makes
default.

Distingas jur.

our lord the king at *Westminster* on *Wednesday* next after three weeks of the *Holy Trinity*, and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid at the same place, &c. At which day before our lord the king at *Westminster* came as well the said *Mary* by her attorney aforesaid, and the said *Nathaniel* by his guardian aforesaid, as the said *John* by his attorney aforesaid; And the sheriffs of the city of *Bristol* aforesaid to wit, *Edward Buckley*, esq; and *William Barnsdale*, esq; return the said writ in all things served and executed, together with a panel of the names of the jury annexed to the said writ, of whom none, &c. Therefore it is commanded to the sheriffs of the city of *Bristol* aforesaid, that they distrain the said jurors by all their lands, &c. and that of the issues, &c. so that they may have their bodies before the said lord the king at *Westminster* * on *Saturday* next after three weeks of *St. Michael*, or before the justices of the said lord the king assigned to take the assizes in the county of the city of *Bristol* aforesaid, if they shall first come, on *Saturday* the 20th day of *August* at the *Guildhall* of the city of *Bristol* aforesaid in the county of the same city, by the form of the statute, &c. for default of the jurors, &c. Therefore let the sheriffs have the bodies, &c. The same day is given to the parties aforesaid there, &c.

And

* No such return. See *Vol. 1. p. 63.*

And be it known that the writ of the said Le sciendum.
lord the king thereupon, on the seventh day
of *July* in the same term before the lord the
king at *Westminster*, is delivered of record to
the deputy of the sheriffs of the county of
the city of *Bristol* aforesaid, to be executed
in form of law at their peril, &c.

Afterwards, to wit, on the day and place *The Postea.*
within contained, before *Edward Roy*, esq;
mayor of the city of *Bristol*, and *Sir Francis Page*, knt. one of the justices of the lord
the king assigned to hold pleas before the lord
the king, justices of the said lord the king
assigned to take the assizes within the county
of the said city, by form of the statute, &c.
came as well the within named *Mary Tyler*
by her attorney last within mentioned, and
the within written *Nathaniel King* by his
guardian within written, as the within named
John Long by his attorney within named;
And the jurors of the jury, whereof mention
is within made, being solemnly demanded,
to wit, *J. R. G. S. &c.* came and were
sworn on that jury; who, to speak the truth of
the premisses within contained, being chosen,
tried and sworn, say, upon their oath, that the
said *Nathaniel* on the within written *Friday*
next after the morrow of the Holy Trinity in
term of the Holy Trinity in the tenth year of the
reign of the lord late king *George* the first, and
on the within written time of the appearance
of the said *Mary Tyler* and *Nathaniel King* in
the court of the said late king before the said
late king, by *Adrian Moore* his attorney made,
and also on the within written time of giving
the

*Verdict for the
plaintiff in
error, that he
was under age.*

Continuance by
Cur. advisar.
vult.

the judgment within specified in form within mentioned, was within the age of twenty and one years, in manner and form as the said *Mary* and *Nathaniel* have within for error assigned: But because the court of our said lord the king now here is not yet advised of giving their judgment of and upon the premisses, day thereupon is given to the parties aforesaid before our lord the king at *Westminster*, until next after to hear their judgment of and upon the premisses, for that the court of the said lord the king now here is not yet, &c.

N.B. The *postea* was produced in court and read, and then the senior judge, after the chief justice had declared that the judgment must be reversed, said in *French* as follows:

Pour les errors assign et pour les autres errors apparent soit le judgment reverse et le party soit restuet a tout qu' il a perde. Which was done in this case by *Probyn J. absente Page J.*

Pleas

Pleas in the Exchequer chamber at Westminster before Sir L. C. knight. Sir W. T. knight, and W. F. esq; three of the barons of the Exchequer of our sovereign lord the king, of the degree of the coif, on Saturday the thirteenth day of May in the eleventh year of the reign of king George the second, &c.

OUR sovereign lord the king hath sent *Entry of a writ of error returnable in the Exchequer chamber.* to his trusty and well-beloved Sir *W. L.* knight. his majesty's chief justice appointed to hold pleas in his majesty's court, before the king himself, his writ closed in these words, *Lill, Ent. 213.* to wit, *George the second by the grace of God, of Great Britain, France and Ireland king, defender of the faith, &c.* To our trusty and well-beloved Sir *W. L.* knight. our chief justice appointed to hold pleas before us, greeting. Whereas by the statute made in the parliament holden at *Westminster* the twenty-third day of *November* in the twenty-seventh year of the reign of the lady *Elizabeth*, late queen of *England*, it was by the authority of the same parliament amongst other things enacted, that when any judgment at any time then after should be given in the court of *King's Bench* in any suit or action of debt, detinue covenant, account, action upon the case, ejectment or trespass first commenced
or

or to be commenced there, other than such only where we should be a party, the plaintiff or the defendant against whom such judgment should be given, may at his election sue forth out of the court of *Chancery* a special writ of error to be devised in the said court of *Chancery*, directed to the chief justice of the said court of *King's Bench* for the time being, commanding him to cause the record, and all things touching the said judgment, to be brought before the justices of the common bench and the barons of the *Exchequer* into the *Exchequer* chamber, there to be examined by the said justices of the common bench and barons aforesaid, which said justices of the common bench, and such barons of the *Exchequer* as are of the degree of the coif, or six of them at the least, by virtue of the said act shall thereupon have full power and authority to examine all such errors as shall be assigned or found in or upon such judgment, and thereupon to reverse or affirm the said judgment as the law shall require, other than for errors to be assigned or found for or concerning the jurisdiction of the said court of *King's Bench*, or any want of form in any writ, return, plaint, bill, declaration, or other pleading, process, verdict or proceeding whatsoever; and that after the said judgment shall be affirmed or reversed, the said record, and all things touching the same, shall be removed and brought back into the said court of *King's Bench*, that such further proceedings may be made thereupon as well for execution as otherwise, as shall appertain,

as in the said statute is more fully contained, and forasmuch as in the record and process, as also in giving of judgment in a plaint which was before us by bill between S. C. and J. S. esq; of a certain trespass and assault done to the said S. by the said J. as it is said, manifest error hath intervened, to the great damage of the said J. as by his complaint we are informed, which said error no ways toucheth us or the jurisdiction of the said court of the said bench, or any want of form in any writ, return, plaint, bill, declaration, or other pleading, process, verdict or proceeding whatsoever, as we are informed; We therefore, willing that the said error, if any be, be duly amended according to the form of the said statute, and full and speedy justice done to the said parties in this behalf, do command you, that if judgment be given thereupon, that then you cause the record and process aforesaid, with all things touching the same, to come before the said justices of the common bench, and barons of our said *Exchequer*, into our *Exchequer* chamber on *Saturday* the thirteenth day of *May* next ensuing, that the said justices and barons viewing and examining the record and process aforesaid, may cause further to be done therein as of right and according to the form of the said statute shall be meet to be done. Witness Ourself at *Westminster* the twenty-sixth day of *April* in the eleventh year of our reign.

The answer of Sir W. L. knt. chief justice within named.

*The return of
the writ of
error.*

THE record and process of the plaint, whereof mention within is made, with all things touching the same, to the justices and barons within specified, at the day and place within contained, I certify in a certain schedule to this writ annexed, as to me is within commanded.

William Lee.

The transcript. Pleas before our lord the king at Westminster, of the term of St. Michael in the eleventh year of the reign of our sovereign lord George the second, by the grace of God, of Great Britain, France and Ireland king, defender of the faith, and in the year of our lord 1737.

Roll 482.

*Warrant of
attorney for
the plaintiff.*

London. S. C. puts in his place A. S. his attorney, against J. S. esq; of a plea of trespass, assault and imprisonment.

For the defendant.

London. J. S. esq; puts in his place R. C. his attorney, against S. C. in the plea aforesaid:

London.

London. Be it remembered, that on *Mon-* Memorandum of the same term.
day next after three weeks of *St. Michael* in
 this same term, before the lord the king at
Westminster, comes *S. C.* by *A. S.* his attorney,
 and brings here in the court of the said lord
 the king now here his certain bill against
J. S. esq; in the custody of the marshal, &c.
 of a plea of trespass, assault and imprison-
 ment; and there are pledges of prosecuting,
 to wit, *John Doe* and *Richard Roe*; which
 said bill follows in these words: *London, S. C.* Declaration on an action brought by a master carpenter of the office of ordnance against General S. governor of Gibraltar,
 complains of *J. S.* esq; in the custody of the
 marshal of the *Marshalsea* of our sovereign
 lord the king, before the king himself; *For*
that the said *J. S.* on the twenty-ninth day
 of *May* in the year of our Lord 1735. at
Gibraltar, to wit, at *London* in the parish of
St. Mary le Bow in the ward of *Cheap*, with
 force and arms, to wit, with staves, swords
 and whips, made an assault upon the said *S.*
 and beat, wounded and treated him ill, and
 without any reasonable cause, and against the
 law of *England*, imprisoned the said *S.* and
 kept and detained him in prison there for a
 long time, to wit, for the space of twenty days,
 and tied the said *S.* to a publick whipping-post,
 and with whips struck divers, to wit; three
 hundred strokes or lashes upon the naked
 body of the said *S.* and kept and confined the
 said *S.* so whipt and wounded in prison for a
 long time, to wit, for the space of two months,
 whereby the said *S.* during all that time un-
 derwent great pain and hardship, and was in
 danger of losing his life, and also was hin-
 dered from using and exercising his employ-
 ment. for causing the plaintiff to be tried by a court marshal there, to which not subject, and to undergo the sentence thereof, viz. to receive 300 lashes, and to leave the place and his employment.

ment and business of a carpenter, and from acquiring thereby large sums of money; *And also* that the said J. S. afterwards, to wit, on the second day of *August* in the year aforesaid, at *Gibraltar* aforesaid, to wit, at *London* in the parish and ward aforesaid, with force and arms, &c. against the will of the said S. compelled and forced the said S. to depart from and leave *Gibraltar* aforesaid; by reason whereof the said S. was not only put to great expence and trouble, and the goods and effects of the said S. there, of the value of five hundred pounds, were diminished, lost and consumed, and the family of the said S. there brought to want and great distress; but also the said S. was totally deprived of proceeding in and exercising the business of a master carpenter of the office of ordnance at *Gibraltar* aforesaid, in which he was retained and employed; and then and there did other injuries to the said S. against the peace of the present king, and to the damage of the said S. ten thousand pounds; and therefore he brings suit, &c.

Plea.

And the said J. by R. C. his attorney, comes and defends the force, injury and damages, and whatever else he ought to defend, when and where the court will take the same into consideration; and saith, that he is in no wise guilty of the premisses above laid to his charge, as the said S. above complains against him; and of this he puts himself upon his country; *and* the said S. likewise, &c. *Therefore* let a jury come thereupon before the lord the king at *Westminster* on *Monday* next after

Not guilty.

Issue.

Venire awarded.

after fifteen days of *St. Martin*, and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c.

At which day before the lord the king at *Westminster* came the parties aforesaid by their attornies aforesaid, and the sheriffs did not send the writ, nor did they do any thing thereupon: *Therefore*, as before, let a jury come before the lord the king at *Westminster* on *Monday* next after the octave of the purification of the blessed virgin *Mary*, and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c. *Afterwards* the process is thereupon continued between the parties aforesaid, of the plea aforesaid, by the jury between them being respited before our lord the king at *Westminster*, until *Wednesday* next after 15 days from *Easter* day then next following, unless the king's right trusty and well-beloved Sir *W. L.* knt. chief justice of our lord the king, assigned to hold pleas in the court of our said lord the king, before the king himself, shall first come on *Wednesday* the 15th day of *February* at the *Guildhall* of the city of *London* aforesaid, by form of the statute, &c. for default of the jurors, &c. At which day before our lord the king at *Westminster* came the said *S. C.* by *A. S.* his attorney aforesaid, and the said chief justice, before whom, &c. sent here his record before him had in these words, to wit, *Afterwards* at the day and place within contained, before Sir *W. L.* knt. chief justice within named,

*Continuance by
vic. non
misit breve.*

*Process
continued.*

Postea.

*Verdict for the
plaintiff by
default.*

*Judgment
signed the 5th
of May
11 Geo. 2.*

*Day given to
assign errors.*

having associated to him *J. S.* gent. by form of the statute, &c. came the within named *S. C.* by his attorney within named, and the within named *J. S.* esq; although solemnly required, came not, but made default: *Therefore* let the jurors of the jury within mentioned be taken against him by default; and the jurors of that jury being summoned came, who to say the truth of the within contents being chosen, tried and sworn, say upon their oaths, that the said *J. S.* is guilty of the premisses within laid to his charge, in manner and form as the said *S.* within complains against him, and assesses the damages of the said *S.* by reason of the premisses within mentioned, over and above his costs and charges by him about his suit in this behalf expended, to seven hundred pounds, and for those costs and charges to forty shillings; *Therefore* it is considered, that the said *S. C.* recover against the said *J. S.* his said damages by the said jury in form aforesaid assessed, and also ninety-four pounds for his said costs and charges, by the court of our said lord the king now here adjudged of increase to the said *S.* by his assent, which damages amount in the whole to seven hundred and ninety-six pounds.

And thereupon came here into court in the said *Exchequer* chamber the said *J. S.* in his proper person, and prays a day to assign error or errors in the record and proceedings aforesaid; upon which a day is here given to him by this court to assign error or errors in the record and proceedings aforesaid, until *Friday* the ninth day of *June* next, &c.

Pleas

Pleas in the Exchequer chamber at Westminster before Sir L. C. knt. Sir W. T. knt. and W. F. esq; three of the barons of the Exchequer of our sovereign lord the king of the degree of the coif, on Friday the ninth day of June in the eleventh year of the reign of king George the second, &c.

And upon this came here into court in the *General errors* said *Exchequer* chamber the said *J. S.* in his *assigned.* proper person, and saith, that in the record and proceedings aforesaid, and also in giving the said judgment, it is manifestly erroneous in this, (that is to say) That whereas by the record aforesaid the judgment aforesaid in form aforesaid given, was given for the said *S. C.* against him the said *J. S.* whereas by the law of the land the said judgment ought to have been given for the said *J. S.* against the said *S. C.* and therefore in that it is manifestly erroneous, and prays a writ to be directed to the sheriffs of *London* to give notice *Scire facias* to the said *S. C.* to be here to hear the record *prayed;* and proceedings aforesaid; and it is granted *and awarded.* to him; *Therefore* it is commanded unto the said sheriffs, that by good men they give notice unto the said *S. C.* that he may be here on *Wednesday* the eighth day of *November* next, &c.

Pleas in the Exchequer chamber at Westminster before Sir J. C. knt. chief baron of the Exchequer of our sovereign lord the king, of the degree of the coif, Sir L. C. knt. and T. P. esq; two other of the barons of the Exchequer of our sovereign lord the king, of the degree of the coif, on Wednesday the eighth day of No-

vember in the twelfth year of the reign of king George the second, &c.

Parties appear.

Vic. non mis. breve.

At which day came here into court in the said *Exchequer* as well the said *J. S.* in his proper person, as the said *S. C.* in his proper person, and the sheriffs did not send the writ aforesaid, nor did any thing thereupon; and therefore the said *J. S.* as at first saith, that in the record and proceedings aforesaid, and also in giving the said judgment, there is manifest error assigned, by alledging the error aforesaid by him above for error assigned and alledged, and desireth that the judgment (by reason of these errors and others being in the record and proceedings aforesaid) may be reversed, annulled, and made void, &c.

Joinder in error.

And the said *S. C.* saith, that neither in the record and proceedings aforesaid, nor in giving the judgment aforesaid, is any thing erroneous, and desireth also that the court of our lord the king here may proceed to the examination as well of the record and proceedings aforesaid, as the aforesaid cause by the aforesaid *J. S.* above assigned for error, and that the judgment aforesaid may be affirmed in all things: But because the court of our lord the king are willing to advise on the premisses before judgment be thereupon given, a day is here given to the said parties until *Wednesday* the thirty-first day of *January* next, &c.

Continuance by cur' advisari vult.

Warrant of attorney for plaintiff in error.

J. S. esq; puts in his place *R. S.* his attorney, against *S. C.* in a plea of correcting errors.

S. C.

S. C. puts in his place A. S. his attorney, *For defendant.*
 against J. S. esq; in a plea of correcting errors.

Pleas in the Exchequer chamber at Westminster before Sir J. W. knt. chief justice of the common bench of our sovereign lord the king, Sir J. C. knt. chief baron of the Exchequer of our sovereign lord the king, of the degree of the coif, A. D. esq; Sir J. F. A. knt. two other of the justices of the common bench of our sovereign lord the king, and also before Sir L. C. knt. Sir W. T. knt. and T. P. esq; the three other barons of the Exchequer of our sovereign lord the king, of the degree of the coif, on Wednesday the thirty-first day of January in the twelfth year of the reign of king George the second.

At which day came here into court in the *Judgment affirmed.*
 said Exchequer chamber, as well the said J. S. as the said S. C. by their attornies aforesaid; upon which the premisses being considered, as well the record and proceedings aforesaid, and the judgment aforesaid on the same given, the causes afore for error assigned being by the court of our lord the king here diligently examined and fully understood, it seemeth unto the said court of our lord the king here, that the judgment aforesaid is not in any wise vitious or defective, and that in the said record there is not any thing erroneous: Therefore it is considered by the said court of our lord the king, that the judgment aforesaid in all things be affirmed, and so stand in its full strength and effect (the said cause above for error assigned and alledged in any thing not-

*Costs occasions
dilationis ex-
ecutionis.*

*Record remit-
ted.*

withstanding): And it is further considered, that the said *S. C.* do recover against the said *J. S.* ten pounds and ten shillings being adjudged to the said *S. C.* at his request by the court of our lord the king here for his damages, costs and charges, which he hath expended by reason of the delay of the execution of the said judgment, and by the prosecution of the said writ of error: Whereupon the record and proceedings aforesaid of the said justices of the common bench and the said barons before them had in the premisses, by the said justices and barons before our lord the king, whersoever, &c. are remitted, according to the form of the statute of the twenty-seventh year of the late queen *Elizabeth.*

Pleas

Pleas in the Exchequer chamber at Westminster before Sir J. W. knt. chief justice of the common bench of our sovereign lord the king, Sir J. F. A. knt. T. P. esq; and T. B. esq; the three other justices of the common bench of our sovereign lord the king, and also before Sir L. C. knt. J. R. esq; and Sir T. A. knt. three of the barons of the Exchequer of our sovereign lord the king, of the degree of the coif, on Friday the twenty-fifth day of June in the sixteenth year of the reign of king George the second, &c.

OUR sovereign lord the king hath sent *Entry of a writ of error returned in the Exchequer chamber on a judgment given in B. R.* to his trusty and well-beloved Sir *W. L.* knt. his majesty's chief justice appointed to hold pleas in his said majesty's court, before the king himself, his writ closed in these words, *judgment given in B. R.* to wit, *George the second, &c.* To our trusty and well-beloved Sir *W. L.* knt. our chief justice appointed to hold pleas before us, greeting. Whereas by the statute made in the parliament holden at *Westminster* the twenty-third day of *November* in the twenty-seventh year of the reign of the lady *Elizabeth*, late queen of *England*, it was by the same parliament enacted, That when any judgment at any time then after should be given in the court of *King's Bench* in any suit or action of debt, detinue covenant, account, action upon

upon the case, ejectment or trespass, first commenced or to be commenced there, other than only where we should be a party, the plaintiff or the defendant against whom such judgment should be given, may at his election sue forth out of the court of *Chancery* a special writ of error to be devised in the said court of *Chancery*, directed to the chief justice of the said court of *King's Bench* for the time being, commanding him to cause the record, and all things touching the said judgment, to be brought before the justices of the common bench and the barons of the *Exchequer* into the *Exchequer* chamber, there to be examined by the said justices of the common bench and barons aforesaid, which said justices of the common bench, and such barons of the *Exchequer* as are of the degree of the coif, or six of them at the least, by virtue of the said act shall thereupon have full power and authority to examine all such errors as shall be assigned or found in or upon such judgment, and thereupon to reverse or affirm the said judgment as the law shall require, other than for errors to be assigned or found for or concerning the jurisdiction of the said court of *King's Bench*, or any want of form in any writ, return, plaint, bill, declaration, or other pleading, process, verdict or proceeding whatsoever; and that after the said judgment shall be affirmed or reversed, the said record, and all things touching the same, shall be brought back into the said court of *King's Bench*, that such further proceedings may be made thereupon as well for execution

cution as otherwise, as shall appertain, as in the said statute is more fully contained. *And* forasmuch as in the record and process, as also in giving of judgment in a plaint which was before us by bill between *J. T.* and *J. S.* gent. *T. S.* and *R. S.* of a certain trespass, assault, and imprisonment, done to the said *J. T.* by the said *J. S. T.* and *R.* as it is said, manifest error hath intervened, to the great damage of the said *J. S. T.* and *R.* as by their complaint we are informed, which said error no ways toucheth us or the jurisdiction of the said court of the said bench, or any want of form in any writ, return, plaint, bill, declaration, or other pleading, process, verdict or proceeding whatsoever, as we are informed: *We* therefore, willing that the said error, if any be, be duly amended according to the form of the said statute, and full and speedy justice done to the said parties in this behalf, *Do* command you, that if judgment be given thereupon, that then you cause the record and process aforesaid, with all things touching the same, to come before the said justices of the common bench, and barons of our said *Exchequer*, into our said *Exchequer* chamber on *Friday*, to wit, the twenty-fifth day of *June* next ensuing, that the said justices and barons viewing and examining the record and process aforesaid, may cause further to be done therein as of right and according to the form of the said statute shall be meet to be done. Witness Ourself at *Westminster* the thirty-first day of *May* in the fifteenth year of our reign.

The

The record and proceedings, and all things concerning the same of which mention is made in the above writ, follows in these words:

Pleas before our lord the king at Westminster of the term of St. Hilary, in the fifteenth year of the reign of our sovereign lord George the second, by the Grace of God, of Great Britain, France and Ireland king, defender of the faith, and in the year of our lord one thousand seven hundred and forty-one. Roll 899.

Warrant of attorney for the plaintiff.

Kent, ss. J. T. puts in his place J. C. his attorney, against J. S. gent. T. S. R. S. and M. L. of a plea of trespass, assault and imprisonment.

Warrant of attorney for the first defendant.

Kent, ss. J. S. gent. puts in his place D. G. his attorney, at the suit of the said J. T. in the plea aforesaid.

Warrant of attorney for the second defendant.

Kent, ss. T. S. puts in his place T. M. his attorney, at the suit of the said J. T. in the plea aforesaid.

Third defendant in person.

Kent, ss. R. S. in person at the suit of the said J. T. in the plea aforesaid.

Warrant of attorney for the fourth defendant.

Kent, ss. M. L. puts in his place R. B. his attorney, at the suit of the said J. T. in the plea aforesaid.

Memorandum of a bill of the same term.

Kent, ss. Be it remembered, That on Saturday next after the octave of St. Hilary in this same term, before our lord the king at Westminster, comes J. T. by J. C. his attorney, and brings in the said court of our said lord the king now here his bill against J. S. gent. T. S. R. S. and M. L. in the custody of the marshal of the Marshalsea of our sovereign lord the king, before the king himself, of a plea of trespass,

trespass, assault and imprisonment; and there are pledges of the prosecution, to wit, *John Doe* and *Richard Roe*; which said bill follows in these words, to wit, *Kent, ss. J. T.* complains of *J. S. gent. T. S. R. S.* and *M. L.* being in the custody of the marshal of the lord the king, before the king himself, for that the said *J. S. T. R.* and *M.* on the twenty-second day of *August* in the fifteenth year of the reign of *George* the second, now king of *Great Britain, &c.* at *Sittingbourne* in the said county of *Kent*, with force and arms, *&c.* to wit, with swords, staves, knives and sticks, made an assault on the said *J. T.* and then and there beat, wounded and ill-treated the said *J. T.* whereof the said *J. T.* was in great danger of losing his life. And also for that the said *J. S. T. R.* and *M.* afterwards, to wit, on the same day and year, at *Sittingbourne* aforesaid, in the county aforesaid, with force and arms, *&c.* to wit, with swords, knives, staves and guns, made another assault on the said *J. T.* and then and there again beat, wounded, imprisoned and ill-treated the said *J. T.* and him the said *J. T.* put in prison without any reasonable cause, against the will of the said *J. T.* and against the laws and customs of this kingdom, for a long time, to wit, for the space of twelve hours detained and kept, and other injuries to the said *J. T.* then and there did, against the peace of the present king, to the damage of the said *J. T.* of one hundred pounds. And therefore he brings suit, *&c.*

*Declaration in
trespass, as-
sault and im-
prisonment,
against four
defendants.
B. R.*

And

*Plea of Not
guilty by three
defendants.*

*Issue.
Judgment by
nil dicit
against the
fourth defen-
dant.*

Unica taxatio.

*Venire facias
tam ad tri-*

And the said *J. S.* by *D. G.* his attorney, and the said *T.* by *T. M.* his attorney, and the said *M.* by *R. B.* his attorney, and the said *R.* in his proper person come and defend the force and injury, when, &c. And the said *J. S. T.* and *M.* say, that they are in no wise guilty of the trespasses, assaults and imprisonments above laid to their charge, as the said *J. T.* above complains against them. And of this they put themselves upon the country. And the said *J. T.* likewise, &c. And the said *J. T.* prays that the said *R.* may answer his said bill, and hereupon the said *R.* prays leave to imparle until *Friday* next after the octave of the purification of the blessed virgin *Mary.* And it is given to him, &c. The same day is given to the said *J. T.* at the same place, &c. At which day before our lord the king at *Westminster* comes the said *J. T.* by his attorney aforesaid. And the said *R.* at that day, though solemnly required, came not, nor does he say any thing in bar or preclusion of the said action of the said *J. T.* whereby the said *J. T.* remains therein undefended against the said *R.* &c. Wherefore the said *J. T.* ought to recover against the said *R.* his damages by him sustained by reason of the trespasses, assault and imprisonment aforesaid. But because it is convenient and necessary that there be but one taxation of damages in this cause, therefore to the assessment of damages against the said *R.* let all inquiry thereof cease till the trial of the above issue joined between the said *J. T.* and the said *J. S. T.* and *M.* And as well to try the said issue,

issue, as to inquire what damages the said *J. T.* hath sustained by reason of the trespasses, assaults and imprisonment aforesaid, let a jury come before the lord the king at *Westminster* on *Friday* next after the octaves of the purification of the blessed virgin *Mary*. And who neither, &c. To recognize, &c. Because as well, &c. The same day is given to the parties aforesaid there, &c. Afterwards the process being continued between the parties aforesaid of the plea aforesaid, by the juries being respited before our lord the king at *Westminster* until *Wednesday* next after fifteen days from the day of *Easter*, unless his majesty's justices assigned to hold the assises in the said county shall first come on *Monday* the fifteenth day of *March* next at *Maidstone* in the county aforesaid, according to the form of the statute in that case lately made and provided, for default of the jury, &c. At which day before our lord the king at *Westminster* comes the said *J. T.* by his attorney aforesaid, and the said justices of the said lord the king sent here the said record had before them in these words, to wit, Afterwards upon the day and at the place within contained, before Sir *L. C.* knt. one of the barons of his majesty's court of *Exchequer*, and *W. W.* serjeant at law, justices of our said lord the king, appointed to take the assises of the county of *Kent*, according to the form of the statute in that case made and provided, came as well the within-named *J. T.* by his attorney within-named, as the within-named *J. S.* *T. S.* and *M. L.* by their several attornies within-named, and

and. quam
inquirend.
awarded.

Process conti-
nued.

Nisi prius.

Day in bank.

Postea.

*Verdict for the
plaintiff
against two
defendants.*

*Damages as-
sessed against
the defendant
who suffered
judgment by
default.*

*Verdict against
the plaintiff
for the other
defendant.*

Judgment.

and the jurors of the jury within-mentioned being drawn by ballot according to the form of the statute in such case made and provided, and called, likewise come, who being elected, tried and sworn to speak the truth concerning the matters within contained, do say upon their oath, That the said J. S. and T. S. are guilty of the trespasses, assaults and imprisonment in manner and form as the said J. T. by his declaration within complains against them; and they assess the damages of the said J. T. on the within-written occasion, besides his costs and charges by him laid out about his suit in this behalf against the said J. S. and T. S. to eighteen shillings and four pence; and for his costs and charges to other eighteen shillings and four-pence. *And* the said jurors upon their said oath further say, that the said J. T. hath sustained damages on occasion of the said several trespasses, assaults and imprisonment within committed by the said R. S. over and above his costs and charges by him laid out about his suit in that behalf, to one shilling, and for those costs and charges to one other shilling. *And* the jurors aforesaid on their said oath further say, that the within-named M. L. is in no wise guilty of the said several trespasses, assaults and imprisonment within laid to his charge, in manner and form as the said J. T. by his said declaration within complains against him, as by him the said M. in his within-written plea is in that behalf alledged. *Therefore* it is considered, that the said J. T. do recover against the said J. S. and T. S. his said damages by the said

said jury in form aforesaid assessed against them to thirty-six shillings and eight-pence; and against the said R. S. his said damages by the said jury, in form aforesaid, assessed to two shillings; and also against them the said J. S. T. S. and R. S. sixteen pounds, by the said court of our said lord the king here adjudged to the said J. T. and with his assent for his costs and charges aforesaid, by way of increase: It is also considered, that the said J. T. be amerced for his false claim against the said M. L. for the said several trespasses, assaults and imprisonment, whereof the said M. L. is above acquitted: and that the said M. go thereof without day, &c.

Afterwards, to wit, on Friday the eleventh In the Exche-
day of *February* in the sixteenth year of the *quer chamber.*
reign of king *George* the second, &c. before

Sir J. W. knt. chief justice of the common bench of our sovereign lord the king, Sir T. P. knt. chief baron of the *Exchequer* of our sovereign lord the king, of the degree of the *coif*, Sir J. F. A. knt. and T. B. esq; two other of the justices of the common bench of our sovereign lord the king, and also Sir L. C. knt. and J. R. esq; two other of the barons of the *Exchequer* of our sovereign lord the king, of the degree of the *coif*, in the said

Exchequer chamber at *Westminster*, comes the *Only one of the*
aforesaid J. S. in his proper person, and the *plaintiffs in*
said T. S. and R. S. although solemnly called, *error appears,*
come not, but make default. And the said

J. S. says, that in the record and process afore- *who prays a*
said, and also in giving the judgment afore- *scire facias*
said, there is manifest error; and prays, that *against the*
other two,

Scire facias
awarded.

Return scire
feci.

a writ of our sovereign lord the king to summon the said T. S. and R. S. to be before the said justices of the common bench and barons of the *Exchequer*, of the degree of the *coif*, in the said *Exchequer* chamber, to prosecute the writ of error aforesaid, together with him the said J. S. if they think fit; and further to do and receive what the court here in the premisses shall consider; and it is granted to him by the said court. *By which* the sheriff is commanded that he summon by good summoners, the said T. S. and R. S. to be before the said justices of the common bench and barons of the *Exchequer*, of the degree of the *coif*, in the said *Exchequer* chamber at *Westminster*, on *Wednesday* the twenty-seventh day of *April* next, to prosecute together with the said J. S. the said writ of error against the said J. T. if, &c. And further, &c. The same day is given to the said J. S. there, &c. And now here at this day, to wit, on *Wednesday* the twenty-seventh day of *April* in the sixteenth year of the reign of king *George* the second, &c. before Sir J. W. knt. chief justice of the common bench of our sovereign lord the king, Sir T. P. knt. chief baron of the *Exchequer* of our sovereign lord the king, of the degree of the *coif*, Sir J. F. A. knt. Sir T. A. knt. and T. B. esq; the three other justices of the common bench of our sovereign lord the king, and also before Sir L. C. knt. J. R. esq; and C. C. esq; the three other barons of the *Exchequer* of our sovereign lord the king, of the degree of the *coif*, in the said *Exchequer* chamber at *Westminster*, comes the

the said *J. S.* in his proper person; and the sheriff, to wit, *T. W.* esq; sheriff of the county of *Kent*, now returneth, that by virtue of the writ to him therefore directed, he had by *S. S.* and *R. L.* good and lawful men of his bailiwick, summoned the said *T. S.* and *R. S.* to be before the justices and barons aforesaid, at the time and place aforesaid, as by the said writ commanded, &c. And the said *T. S.* *They make default.* and *R. S.* being solemnly called the fourth day, come not. *Wherefore it is considered,* *Judgment that he prosecute alone.* that the said *J. S.* alone, without the said *T. S.* and *R. S.* prosecute the said writ of error, and assign the error in the record and process aforesaid, and also in giving the judgment aforesaid, &c. And upon this the said *J. S.* in his proper person comes and says, *General errors assigned.* that in the record and process aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, that is to say, that by the record and process aforesaid, it appears, that the said judgment is given for the said *J. T.* against the said *J. S.* when by the law of this realm the said judgment ought to have been given for the said *J. S.* against the said *J. T.* Therefore in this there is manifest error. And the said *J. S.* prays, that for this and other errors in the said record, the said judgment may be reversed, annulled, and held intirely for nothing; and that he may be restored to all things which he hath lost by occasion of the said judgment; and that the said *J. T.* may rejoin to the said error, &c.

T. Robinson.

Rejoinder.

And the said *J. T.* comes voluntarily into court here, and says that in the record and process aforesaid, or in giving the judgment aforesaid, there is not any error; and prays, that the court here may proceed to the examination of the record and proceedings as of the matter aforesaid above assigned for error.

Ed. Bootle.

*Continuance by
curia advisari
vult.*

But because the court of our lord the king here are willing to consider of and concerning the said premisses before judgment is given thereon, a day is given unto the said parties until next, to hear judgment thereof, for that the said court of our lord the king now here is not yet advised thereof, &c.

*Error assigned
in parliament.*

Afterwards, to wit, on the day of the year of the reign of our sovereign lord *George* the second, now king of *Great Britain*, &c. before the king himself in his parliament, the said *E. S.* comes by *G. W.* his attorney, and says, that in the said record and process, as also in giving the said judgment there is manifest error in this, to wit, that the said declaration and the matter contained therein, is not sufficient in law to maintain the action of the said *G. R.* against the said *E. S.* therefore in that there is manifest error; also in this, that by the said record it appears, that the said judgment was given in form aforesaid for the said *G. R.* against the said *E. S.* when by the law of the land

land the said judgment ought to have been given for the said *E. S.* against the said *G. R.* and the said *E. S.* prays, &c.

Afterwards, to wit, on the day of _____ in the _____ year of the reign of our sovereign lord *George* the second now king of *Great Britain*, &c. before our said lord the king and great men and peers assembled in this present parliament at *Westminster* in the county of *Middlesex*, the said *T. L.* comes by *J. L.* his attorney, and says, that there is manifest error in the said record and process, also in giving and affirming the said judgment mentioned in the said record, in this, to wit, that by the said record it appears, that the said judgment given by the court of our said lord the king, before the king himself at *Westminster*, was given for the said *J. B.* against the said *T. L.* when by the law of the land the said judgment ought to have been given for the said *T. L.* against the said *J. B.* and therefore in that there is manifest error; there is also error in affirming the said judgment, because he says that the said judgment was affirmed in the court of our lord the king of *Exchequer* chamber at *Westminster* before the justices of the common bench and the barons of the said *Exchequer*, where no such affirmance of the said judgment ought to have been thereupon given; but the said judgment by the law of the land ought to have been reversed; and therefore in that there is manifest error. And the said *T. L.* prays that the said judgment, for the said er-

The like.

rors and others in the said record and process, may be reversed, annulled and intirely set aside, and that he may be restored to all that he has lost by occasion of the said judgment and affirmance, and that the said *J. B.* may rejoin to the said errors, &c.

*Error assigned
on a judgment,
and affirmance
of that judg-
ment in Ire-
land.*

Afterwards, to wit, on *next*
after *in this same term*
before our lord the king at *Westminster* the
said *N. G.* and *W. C.* come by *L. H.* their
attorney, and say, that in the said record and
process, and also in giving the said judgment,
and also in affirming the same, there is a ma-
nifest error in this, to wit, that by the record
of the said judgment, and affirmance of the
same, it appears, that the said judgment in
form aforesaid given and affirmed, was given
and affirmed for the said *J. W.* against the
said *N.* and *W.* when, by the law of the
land of the kingdom of *Ireland*, the said judg-
ment ought to have been given for the said
N. and *W.* against the said *J.* Therefore in
that there is manifest error: And this they the
said *N.* and *W.* are ready to verify: Where-
fore they pray, that the said judgment and
affirmance thereof, for the said error and other
errors in the said record and process, may
be reversed, annulled and intirely set aside,
and that they the said *N.* and *W.* may be
restored to all that they have lost by occa-
sion of the said judgment and affirmance, &c.
and that the said *J.* may rejoin to the said
errors, &c.

Afterwards,

Afterwards, to wit, on *next Error assigned*
after the *before our* *in B. R. on a*
 lord the king at *Westminster* the said *T. B.* *judgment given*
 comes by *T. H.* his attorney, and says, that *in C. B.*
 in the said record and process, also in giving
 the said judgment, there is manifest error,
 in this, to wit, that the said declaration in
 the said record mentioned, and upon which
 the said judgment is given in form aforesaid,
 and the matter therein contained, is not suffi-
 cient in law to maintain the said judgment
 thereupon given in form aforesaid; and so
 the said judgment thereupon given in form
 aforesaid is erroneous and void in law; and
 therefore in that there is manifest error; there
 is also manifest error in this, that where by
 the said record it appears, that the said judg-
 ment in form aforesaid given, was given for
 the aforesaid Sir *W. H. knt.* Sir *R. O. knt.*
 and *W. O.* against the said *T. B.* whereas by
 the law of the land judgment in the said plea
 ought to have been given for the said *T. B.*
 against the said Sir *W. H. knt.* Sir *R. O. knt.*
 and *W. O.* and thereupon in that there is ma-
 nifest error: And he prays, that the said
 judgment for these errors and others in the
 said record and process may be reversed, an-
 nulled and intirely set aside, and that he the
 said *T.* may be restored to all that he has lost
 by occasion of the said judgment, and that
 the said Sir *W. H. knt.* Sir *R. O. knt.* and
W. O. may rejoin to the said errors, &c. *And Rejoinder in*
 the said Sir *W. H. knt.* Sir *R. O. knt.* and *error.*
W. O. come by *A. M.* their attorney, and say,

that there is no error either in the said record and process, or giving the said judgment; and pray that the court of our lord the king now here may proceed to examine as well the said record and process, as the said matters above assigned for errors by the said *T. B.* and that the said judgment may be in all things affirmed.

*Error assigned
on judgment in
C. B.*

And the said *B.* countess dowager of *Plymouth* by *H. D.* her attorney, comes and says, that in the said record and process, as also in giving the said judgment, there is manifest error, in this, to wit, that the said declaration, and the matter therein contained, are not sufficient in law to maintain the action of the said *T.* and *D.* thereupon against her the said countess; therefore in that there is manifest error; there is also error in this, that by the said record it appears, that the said judgment given in the manner and form aforesaid, was given for the said *T.* and *D.* against the said countess in the plea aforesaid, where by the law of the land the said judgment ought to have been given for the said countess against the said *T.* and *D.* and therefore in that also there is manifest error: *And* the said countess further says, that there is also error in this, to wit, that there is not any warrant of attorney affiled of record in the said court of *Common Bench* between the said parties of the plea aforesaid, to warrant the said *C. D.* to be attorney for the said *T.* and *D.* against the said countess in the plea aforesaid; therefore in that also there is manifest error: *Wherefore* the said countess prays
the

*No warrant
of attorney.*

*Certiorari
prayed.*

the writ of our lord the king of *Certiorari*
to the chief justice of our said lord the king
of the bench to be directed, &c. and it is
granted to her, &c. *Whereby* it is com- *Award of the*
manded to Sir *knt.* *Certiorari.*

chief justice of the bench aforesaid, That he
search the rolls and other memorandums of
the warrants of attorney of the county of *Mid-*
dlesex of *Easter* term in the
year of the reign of our said lord the king,
being in his custody on record, and that he
without delay certify to our said lord the
king, wheresoever, &c. what he shall there-
upon find in the said rolls and memorandums,
together with the writ of our said lord the
king to him thereupon directed, &c. which
said chief justice of the bench aforesaid an-
swered to our said lord, That the execution *Return.*
of the said writ appeared in a certain schedule
annexed to the said writ, in which said sche-
dule is contained the title of the rolls of the
warrants of attorney filed of *Easter* term
aforesaid in the said writ specified, being in
the custody of the said chief justice on record,
and the record of a certain warrant of attor-
ney between the parties aforesaid, of the plea
aforesaid, in the same form in which the said
warrant of attorney is entered on record on
the said rolls; which said title and warrant of
attorney follow in these words: The rolls of
attornies received before Sir
knt. chief justice of our lord the king of the
bench, and his companions, of *Easter* term
in the year of the reign
of our sovereign lord

king

*Warrant of
attorney for
an executrix
against an
executrix.*

king of *Great Britain, France and Ireland*,
defender of the faith, &c.

Middlesex, to wit, *T. T.* esq; and *D.* his
wife, executrix of the last will and testament
of *Sir E. P.* knt. put in their place *C. D.* their
attorney, against *B.* countess dowager of *Ply-*
mouth, executrix of the last will and testa-
ment of *C.* earl of *Plymouth*, of a plea of
debt; which said writ is assised among the
records without a day, &c. And upon this
the said *T.* and *D.* by *M. J.* their attorney,
come freely here into court, and the said *B.*
countess dowager of *Plymouth*, as before, says,
that in the said record and proceedings, as
also in giving the judgment aforesaid, there
is manifest error, by alledging the errors aforesaid
by her in form aforesaid alledged; and
prays that the said judgment, for those errors
and others of the said record and proceedings,
may be reversed, annulled and intirely set
aside, and that she may be restored to all that
she has lost by occasion of the said judgment,
&c. and that the said *T.* and *D.* may rejoin
to the said errors, &c. and that the court of
our said lord the king here may proceed to the
examination as well of the said record and
proceedings, as of the aforesaid matters above
assigned for error, &c. And the said *T.* and
D. say, that there is no error either in the
said record and process, or in giving the said
judgment; and they likewise pray that the
court of our said lord the king may proceed
to the examination as well of the said record
and proceedings, as of the matters aforesaid
above assigned for error, and that the said
judgment

*In nullo est
erratum re-
joined.*

judgment may be in all things affirmed, &c.

But because the court of our said lord the king now here is not yet advised about giving judgment of and concerning the premisses, *Continuance by cur' advise vult.*

day is therefore given to the said parties to come before our lord the king from * the day of St. *Michael*, in three weeks then next ensuing, wheresoever, &c. to hear judgment of and upon the same premisses, for that the court of our said lord the king now here is not yet advised thereof: *At* which day before

Continuance;

our lord the king at *Westminster* the said parties come by their attornies aforesaid: *But* because the court of our said lord the king now here is not yet advised about giving judgment of and concerning the premisses, day is therefore given to the said parties to come before our lord the king on the octave of St. *Hilary*, wheresoever, &c. to hear judgment of and upon the same premisses, for that the court of our said lord the king now here is not yet advised thereof: *At* which day

Continuance;

before our lord the king at *Westminster* the said parties come by their attornies aforesaid: *But* because the court of our said lord the king now here is not yet advised about giving judgment of and concerning the premisses, day is therefore given to the said parties to come before our lord the king in fifteen days of *Easter*, wheresoever, &c. for that the court of our said lord the king now here is not yet advised thereof: *At* which day before our lord

Judgment reversed.

* No such return. See *Vol. 1. p. 63.*

the king at *Westminster* the said parties come by their attornies aforesaid; upon which as well the said record and proceedings, and judgment thereupon given, as the said causes and matters above for error assigned, being viewed and by the court of our said lord the king now here fully understood and diligently examined; for that it appears to the court of our said lord the king now here, that there is manifest error in the said record and proceedings, and also in giving the said judgment; it is considered, that the said judgment, for the said errors and others in the said record and proceedings, be reversed, annulled and intirely set aside, and that the said *B. countess dowager of Plymouth* be restored to all that she hath lost by occasion of the said judgment, &c.

*Assignment of
error in B. R.*

Afterwards, to wit, on *Monday* next after the morrow of the Ascension of our Lord, in this same term before our sovereign lord the king at *Westminster* cometh the said *E. W.* in her proper person, and saith, that in the record and proceedings aforesaid, and also in the giving of the judgment aforesaid, there is manifest error in this, to wit, that the said declaration in the said record specified, and the matters therein contained are not sufficient in law for the said *W. W. W.* to maintain his said action against the said *E.* therefore in this there is manifest error; there is also error in this, that whereas by the said record it appears, that the said judgment in form aforesaid

said given, was given for the said *W. W.* against the said *E.* yet the said judgment by the law of the land ought to have been given for the said *E.* against the said *W. W.* therefore in this also there is manifest error; there is also error in this, that by the record here certified it appears, that the said *W. W.* appeared and declared by *T. W.* his attorney, yet the said *T. W.* hath no warrant of attorney filed of record to appear for the said *W. W.* against the said *E.* of the plea aforesaid, and that the said *E.* appeared by *J. C.* her attorney, yet the said *J. C.* had no warrant of attorney to appear for the said *E.* against the said *W. W.* in the plea aforesaid. There is also error in this, (that is to say) that no original writ between the said parties of the plea aforesaid is filed of record, or remains of record in the custody of the keeper of the writs of our lord the king of the common bench; and hereupon the said *E.* prays two severall writs of our said lord the king, to wit, one of them to be directed to Sir *R. E.* knt. chief justice of our said lord the king of the common bench, and the other to *G. H.* earl of *Litchfield*, keeper of the writs and rolls of our said lord the king of the common bench aforesaid, to certify fully to our said lord the king the truth thereof, and they are granted to her, &c. and the said *E.* also prays that the said judgment for the said errors, and other the errors being in the said record and proceedings, may be reversed, annulled and altogether held for naught, and that the said *E.* may be restored to all that she hath lost by means

*No warrant
of attorney;*

Nor original.

*Certiorari
prayed.*

means of the said judgment, and that the said *W. W.* may rejoin to the errors aforesaid.

W. Chapple.

Whereupon Tuesday next after eight days from the *Holy Trinity* is given by the said court of our said lord the king to return to the court of the said lord the king, before the king himself at *Westminster*, the said several writs of *certiorari* above prayed; and the same day is given to the said *W. W.* there, &c. And the said chief justice of the said bench, and the said keeper of the said writs and rolls of the said lord the king that now is, did not send the said several writs at the said day, nor either of them, &c. nor did any thing thereupon, nor either of them did any thing thereupon.

And thereupon the said *W. W.* by *W. B.* his attorney, freely cometh here into court, and the aforesaid errors being heard, now says, that neither in the record and the said proceedings, nor in the giving of judgment aforesaid, in any thing is there error; and prays also that the court of our said lord the king now here in like manner may proceed to the examination as well of the record and the proceedings aforesaid, as the cause aforesaid by the said *E. W.* for error above assigned and alledged, and that the judgment aforesaid in all things may be affirmed. *But* because the court of our said lord the king is not yet advised to give their judgment of and upon the premisses, a further day is given to the

the parties aforesaid before our lord the king, until *wherefoever, &c.* to hear their judgment of and upon the premises, because the court of our said lord the king are not yet advised thereof, &c.

Pleas before our lord the king at Westminster, of the term of the Holy Trinity in the year of the reign of our lord George the second, now king of Great Britain, &c.

Roll

England, **O**UR lord the king sent to his right trusty and well-beloved Sir *J. W.* *knt.* his chief justice of the bench, his writ close in these words, to wit, *George the second by the grace of God, of Great Britain, France and Ireland king, defender of the faith, &c.* To his trusty and well-beloved Sir *J. W.* *knt.* chief justice of the bench, greeting. Forasmuch as in the record and proceedings, and also in giving judgment in a plaint which was in our court before you and your associates our justices of the said bench, by our writ between *J. A.* and *J. W.* late of *London*, merchant, *J. O.* late of *London*, merchant, and *N. R.* late of *London*, merchant, of a certain trespass upon the case to the said *J. A.* &c. (to the end of the transcript) and the said *J. W.* *J. O.* and *N.* in mercy, &c.

The manner of making up a record of nisi prius, on issue joined in error on a judgment in C.B.

The record of the judgment after a verdict in case.

After-

Error assigned
in B. R.

Death of one
of the defen-
dants before
trial.

Afterwards, to wit, on *Wednesday* next after fifteen days of *Easter* in that same term, before our lord the king at *Westminster* the said *J. O.* and *N. R.* come in their proper persons, and say, * That in the said record and proceedings, as also in giving the said judgment, there is manifest error in this, to wit, that it appears by the said record, that the said judgment is given as well against the said *J. W.* as against the said *J. O.* and *N. R.* when in truth the said *J. W.* in the said plea mentioned died before the trial of the issue in the said record joined between the parties aforesaid, and before the giving the said judgment to wit, on the _____ day of _____ in the _____ year of the reign of our said sovereign lord the now king, at *Horsham* aforesaid in the county of *Sussex* aforesaid, and so the said judgment is erroneous and void in law. And the said *J. O.* and *N. R.* pray, that the said judgment, for the error aforesaid, and other errors in the said record and proceedings, may be reversed, annulled and intirely set aside; and that

* Judgment in *C. B.* against five defendants, four of them bring a writ of error, and assign for error, that the fifth defendant died before the verdict, but did not conclude this assignment of error in fact with *hoc parati sunt verificare*; the defendant pleaded *in nullo est erratum* generally; the plaintiffs moved to amend, by adding *hoc parati sunt verificare*; denied, because it was not to affirm, but to reverse a judgment. *Hil. 7 W. 3. B. R. Walker v. Stokoe, Carth. 367.*

that they the said *J. O.* and *N. R.* may be restored to all they have lost by occasion of the said judgment; And they pray the writ of our lord the king to summon the said *J. A.* to come before our lord the king to hear the said record and proceedings; and it is granted to them. By which it is commanded to the sheriff of *Sussex*, that by good, &c. he make known to the said *J. A.* that he be before our lord the king on the morrow of the *Holy Trinity*, whereforever, &c. to hear the said record and proceedings, if, &c. and further, &c. The same day is given to the said *J. O.* and *N. R.* &c. At which day before our lord the king at *Westminster* the said *J. O.* and *N. R.* come in their proper persons, And the sheriff did not return the said writ.

Award of
scire facias ad
audiendum er-
rores.

Vic. non mis-
breve.

And the said *J. A.* on the fourth day of the plea being solemnly demanded also comes by *J. A.* his attorney, and says, that by anything before alledged the said judgment ought not to be reversed, because he says, that the said *J. W.* in the said plea mentioned, is yet in being and alive; without this, that the said *J. W.* before the trial of the said issue in the said record joined between the parties aforesaid, died in manner and form as the said *J. O.* and *N.* have above alledged: And this he is ready to verify: Wherefore he prays, that the said judgment may be in all things affirmed, &c.

Plaintiff in
original action
appears;

Pleads the said
defendant is
living.

And traverses
his death.

And the said *J. O.* and *N. R.* as before say, that the said *J. W.* before the trial of the said issue in the said record joined between the parties aforesaid, died in manner and form as

Replication.

Issue.

Venire a-
warded.

Return.

Distringas
awarded.

they the said *J. O.* and *N. R.* have above alledged; and they pray that this may be inquired of by the country: And the said *J. A.* does likewise the same, &c. It is therefore commanded to the sheriff of the said county of *Sussex*, that he cause to come before our lord the king from the day of the *Holy Trinity* in three weeks, wheresoever, &c. twelve, &c. of the body of the county, &c. by whom, &c. and who neither, &c. to take cognizance upon their oaths, whether the said *J. W.* before the trial of the said issue in the said record joined between the parties aforesaid, died, as the said *J. R.* and *N. R.* have alledged, or no; because as well, &c. The same day is given to the parties aforesaid, &c. At which day before our lord the king at *Westminster* came as well the said *J. O.* and *N. R.* in their proper persons, as the said *J. A.* by his attorney aforesaid; and the sheriff of *Sussex*, to wit, returns the said writ of *venire facias* to him in form aforesaid directed, in all things served and executed, together with a panel of the names of the jurors, of whom none, &c. It is therefore commanded to the said sheriff, that he distrain the said jurors by all their lands, &c. so that he may have their bodies before our lord the king* from the day of *St. Michael* in three weeks, wheresoever, &c. or before the justices of our said lord the king assigned to take the assises in the county aforesaid,

* No such return. See *Vol.* 1. p. 63.

said, if they shall first come on the ~~first~~ day of ~~the~~ in the county aforesaid, according to the form of the statute in such case made and provided, for default of the jurors, &c. Therefore let the sheriff have the bodies, &c. The same day is given to the parties aforesaid, &c. *Le sciendum?* And be it known, that the king's writ in this case on record was delivered to the deputy sheriff of the said county, on [the last day of the term] in this same term before our lord the king at Westminster, to be executed according to law, at his peril, &c.

As yet of the term of the Holy Trinity.

Witness Sir W. L. knight.

England, to wit, T. M. puts in his place, *Warrant of attorney for the plaintiff.* J. W. his attorney to prosecute his writ of error against W. R. esq; in a plea of trespass, and ejectment of farm. *in error.*

England, to wit, The said W. R. puts in, *For the defendant.* his place A. S. his attorney against the said T. M. on the said writ of error in the plea aforesaid.

England, to wit, The lord the king sent, *Entry of a writ of error to B. R. in Ireland on reversal of a judgment in ejectment given in C. B. there.* to his trusty and well-beloved J. R. esq; his chief justice appointed to hold pleas in his court, before the king himself, in his kingdom of Ireland, his writ enclosed in these words, to wit, George the second, by the grace of God, of Great Britain, France and Ireland king, defender of the faith, &c. To our

*The writ of
error.*

trusty and well-beloved *J. R. esq;* our chief justice appointed to hold pleas before us in our kingdom of *Ireland*, greeting. Forasmuch as in the record and process, as also in giving of judgment in a plaint which was before our justices of the bench in our kingdom of *Ireland*, by our writ between *T. M.* and *W. R. esq;* of a certain trespass and ejectment of farm done to the said *T.* by the said *W.* Whereupon judgment was given for the said *T.* against the said *W.* in the same court of the bench in our said kingdom of *Ireland*: Which said record and process, by reason of error intervening, we caused to come before us in our said kingdom of *Ireland* and judgment thereupon before us, against the said *W.* is reversed, as it is said; and because in reversing of the said judgment before us in our said kingdom of *Ireland* upon our said writ of error, manifest error hath intervened, to the great damage of the said *T.* as by his complaint we are informed: We willing that the said error, if any be, be duly amended and full and speedy justice done to the said parties in this behalf, do command you, that if judgment be thereupon given in our said court of the bench, and in our court reversed before us in our said kingdom of *Ireland*, then you send to us distinctly and plainly under your seal the record and process aforesaid, with all things touching the same, and this writ, so that we may have them before us from the day of *St. Martin* in fifteen days, wheresoever we shall then be in *England*, that the record and process aforesaid being inspected, we may cause

cause further to be done thereupon for amend-
ing the said error, as of right and according
to the law and custom of *England* shall be
meet to be done; and notify to the said *W.*
that he be then there to proceed in the said
plaint, and further to do and receive what our
court in *England* shall consider in the premisses.
Witness Ourself at *Westminster* the fifteenth
day of *October* in the thirteenth year of our
reign. Allowed *Prudom.*

John Rogerfon.

The record and process within mentioned, *The return.*
with every thing touching the same, I most
humbly send to our lord the king, wheresoever
he shall be in *England*, in a certain record
to this writ annexed, and I have notified to
the within-named *W. R.* that he be then there
to proceed in the said plaint, as by the said
writ I am commanded.

The answer of *J. R.* the chief
justice within-named.

[Then enter the whole transcript.]

Afterwards, to wit, on *Wednesday* next af- *Assignment of*
ter fifteen days from the day of *Easter* in this *errors in B. R.*
same term before the lord the king at *West-* *in England on*
minster comes the aforesaid *T. M.* by *J. W.* his *a judgment gi-*
attorney, and saith, that in the record and *ven for the*
proceedings of reversal and annulity of the *plaintiff in*
judgment aforesaid upon the said first writ of *C. B. in Ire-*
error, there is manifest error in this, to wit, *land, and*
That the judgment aforesaid by the said court *reversed in*
B. R. there.

of the said lord the king before the king himself in *Ireland* upon the said first writ of error was reversed and annulled; whereas the said judgment ought to have been affirmed by the same court: Therefore in this there is manifest error: And the said *T. M.* prayeth that the reversal and annullity of the judgment aforesaid for that and other the errors in the record and proceedings of reversal and annullity of the same judgment may be reversed, annulled, and altogether held for naught; and that the said first judgment may in all things be affirmed; and that he may be restored to every thing which he lost by reason of the same reversal and annullity, and that the aforesaid *W. R.* may rejoin to the errors aforesaid, &c.

J. Strange.

*Rejoinder in
error.*

And the said *W.* by *A. S.* his attorney comes here into court, and says, that in the record and proceedings of reversal and annullity of the judgment aforesaid upon the said first writ of error, there is not any error; and prays that the court of our said lord the king here may proceed to examine as well the record and proceedings of reversal and annullity of the aforesaid judgment upon the said first writ of error, as the matter aforesaid above assigned for error; and that the judgment of reversal and annullity aforesaid upon the said first writ of error may be in all things affirmed, &c.

Tho. Denison.

GEORGE

GEORGE the second, by the grace of *Certiorari in*
 God, of *Great Britain, France and Ire-* *error to the*
land king, defender of the faith, &c. *To* *chief justice*
 our trusty and well-beloved Sir *Dudley Ryder,* *a bill.*
knight, our chief justice assigned to hold
 pleas in our court before us, greeting. *We*
 being willing for certain causes that it should
 be certified unto *Us,* whether there be any
 bill filed against *Richard Cocks,* at the suit
 of *John Gentleman* in a plea of breach of
 covenant before you of record, or not, do
 command you that you search the files and
 other remembrances of the bills of the city
 of *London,* of the term of the *Holy Trinity*
 in the twenty-seventh and twenty-eighth
 years of our reign, which are in your custody
 filed of record. And what you shall find
 therein of the said bill between the parties
 aforesaid of the plea aforesaid, do you cer-
 tify without delay to our justices of the
 common bench and the barons of our Ex-
 chequer in our court of Exchequer chamber
 at *Westminster,* together with this writ. *Wit-*
ness Sir *John Willes,* knight, at *Westminster,*
 the twenty-seventh day of *November* in the
 twenty-ninth year of our reign.

Willes.

*The answer of Sir Dudley Ryder, knight,
chief justice within written :*

The return.

*I have searched the files and other remem-
brances of the bills of the city of London of
the term of the Holy Trinity in the twenty-se-
venth and twenty-eighth years of the reign
of the said lord the king affiled of record in
my custody ; and there find a certain bill of
the same term between the parties within
mentioned of the plea aforesaid. The tenor
of which said bill is set forth in a certain
schedule to this writ annexed : And this I
certify to his. said majesty's justices of the
common bench and barons of the Exchequer
within written, as I am within commanded.*

D. Ryder.

*Certiorari to
the chief ju-
stice C. B. to
certify war-
rants of attor-
ney. B. R.
1 r. Reg. 25.*

GEORGE the second, &c. To our trusty
and well-beloved Sir R. E. knt. our chief
justice of the bench, greeting. *We* being
willing for certain causes, to be certified,
whether the general privileged *Dutch* compa-
ny trading to the *West Indies* have made *W.*
B. their attorney against *J. L. H.* late of
Philpot-lane, London, jeweller, *J. S. H.* late of
Camomile-street, London, merchant, *I. S. H.* late
of *Fenchurch-street, London*, merchant, *D. D. A.*
late of *Berry-street, London*, merchant, *W. H.*
late of the *Poultry, London*, serjeant at mace,
and *C. N.* late of *Warwick-lane, London*, gent.
in a plea of debt in a writ of *scire facias*, and
whether

whether the said *J. L. H. J. S. H. I. S. H. D. D' A. W. H.* and *C. N.* have made *W. G.* their attorney against the said general privileged *Dutch* company trading to the *West Indies* in the same plea before you of record, or not, command you that you search the rolls and other memorandums of warrants of attorney of our court of the bench for the county of *Middlesex*, in the terms of *St. Hilary* and *Easter* in the eleventh year of the reign of the lord *George* the first, late king of *Great Britain*, &c. being in your custody of record; and that what you shall thereupon find in the same between the said parties in the plea aforesaid, you certify to us without delay, wheresoever we shall then be in *England*, together with this writ. Witness Sir *R. R. knt.* at *Westminster*, the eighth day of *May* in the *11* year of our reign.

Ventris.

The answer of Sir R. E. knt. the chief justice within-named.

I Certify to the lord the king within written, *The return.* that having searched the rolls and other memorandums of warrants of attorney for the county of *Middlesex*, for the terms and year within-written, I have not found in the same that the said general privileged *Dutch* company trading to the *West Indies*, have made *W. G.* their attorney, against the within-named *J. L. H. J. S. H. I. S. H. D. D' A. W. H.* and *C. N.* in the plea within-written, or that the said

said *Y. L. H. Y. S. H. I. S. H. D. D' A. W. H.* and *C. N.* have made the said *W. G.* their attorney against the said company, in the plea within-written.

R. Eyre.

After this the defendants in error sued out, after alledging diminution, another *certiorari*, whereupon the warrants were returned.

*Certiorari to
the custos bre-
vium to certify
an attachment
of privilege.*

GEORGE the third, &c. To our trusty and well-beloved *G. H.* earl of *Litchfield*, keeper of the writs and rolls of our court of the common bench, greeting: We willing for certain causes to be certified, whether our writ of attachment of privilege between *G. D. gent.* one of the attornies of our court of common bench at *Westminster*, and *C. K. esq;* of a plea of trespass upon the case, be filed or remaining of record in your custody, or not, do command you, that you search the file of writs of attachment of privilege, and other memorandums of the county of *Middlesex* of the term of *St. Michael* last past, being in your custody on record of the court of the bench, and that without delay you certify to us wheresoever we shall be in *England*, &c. what you shall find of the said writ between the parties aforesaid, of the plea aforesaid, together with the return thereof, and this writ. Witness Sir *W. L. knt.* at *Westminster*, the fifteenth day of _____ in the year of our reign.

Lee.

H. G.

H. G. of Newgate-street, London, *sugar-baker.*

T. N. of Tower-hill, London, *wine-merchant.*

You severally acknowledge to owe ——— *The form of*
 [the plaintiff in the action] the sum of ——— *taking the re-*
 [double the sum recovered] upon condition *cognizance of*
 that ——— and ——— [the defendants in *bail in error*
 the action] prosecute their writ of error with *coram nobis*
 effect; and if judgment be affirmed, shall sa-
 tisfy and pay the debt, damages and costs re-
 covered, together with such costs as shall be
 awarded by occasion of the delay of execution,
 or else you will do it for them.

*Of the term of St. Hilary in the twenty-
 second and twenty-third years of king
 Charles the second.*

B. } *Assignment of*
 against } *errors.*
 AND the said P. B. by D. M. his

T. } that in the said record and proceed-
 ings, and also in giving the said judgment
 there is manifest error, to wit, in this, that
 where the said judgment given in the said
 plaint was given for the said G. T. against the
 said P. B. in the plea aforesaid, the said judg-
 ment by the law of the land *of this kingdom*
of England ought to have been given for the
 said P. B. against the said G. T. and so the
 said P. says, that in the said record and pro-
 ceedings,

ceedings, and also in giving the said judgment, there is manifest error. And the said *P.* prays the writ of our lord the king to summons, &c.

T. Siderfin.

Continuance.

At which day before our lord the king at *Westminster* the said parties come by their attornies afore said; *But* because the court of our said lord the king now here is not yet advised about giving judgment of and concerning the premisses, day is therefore given to the said parties to come before our lord the king at *Westminster* until *Friday* on the morrow of the ascension of our Lord to hear judgment of and upon the same premisses, for that the court of our said lord the king now here is not yet advised thereof.

*Affirmance of
a judgment in
B. R.*

At which day before our lord the king at *Westminster* the said parties come by their attornies afore said: Whereupon the said court having seen and fully understood all and singular the premisses, and having diligently examined and inspected as well the record and proceedings afore said, and the judgment given thereupon, as the causes and matters afore said assigned by the said *J. S.* as above for error; it appears to the said court that there is no error either in the record and proceedings afore said, or in the giving the judgment afore said; and that the said record is no ways vitious or defective: Therefore it is considered, that the judgment be in all things affirmed and that it stand in its full force and virtue, notwithstanding the cause and

and matter aforesaid as above assigned for error: And it is further considered by the said court, that the said *W. M.* recover against the said *J. S.* ten pounds adjudged to the said *W. M.* by the said court according to the form of the statute in such case made and provided, for his costs, charges and damages which he hath sustained by reason of the delay of execution of the judgment aforesaid; on pretext of prosecuting the writ of error aforesaid: And that the said *W. M.* have execution thereof.

*Costs occasione
dilationis exe-
cutionis.*

*transmitti
in the Ex-
chequer cham-
ber.*

*Entry of record
transmitted
into the Ex-
chequer cham-
ber.*

*transmitti
in the Ex-
chequer cham-
ber.*

Error assigned.

Afterwards, to wit, on the ~~the~~ day of ~~the~~ in the ~~the~~ year of the reign of our sovereign lord *George the second*, by the grace of God of *Great Britain, France and Ireland* king, defender of the faith, the transcript of the said record and process, between the parties aforesaid, of the plea aforesaid, with all things touching the same, on pretext of a certain writ of error prosecuted in the premisses by the said *P.* before his majesty's justices of the common bench and barons of the *Exchequer*, of the degree of the *coif*, were transmitted from the court of our said lord the king, before the king himself, into the *Exchequer* chamber, according to the form of the statute made in the parliament of our lady *Elizabeth* late queen of *England*, held at *Westminster* the twenty third day of *November* in the twenty seventh year of her reign: And the aforesaid *P.* appearing in the same court of *Exchequer* chamber, assigned certain matters for errors in the record and process aforesaid,

said, for reversing and annulling the judgment
aforesaid: To which the aforesaid D. likewise
appearing in the same court of *Exchequer*
chamber, pleaded that there was no error
either in the record or process aforesaid, or in
giving of the said judgment.

*Affirmance of
judgment in the
Exchequer
chamber.*

And afterwards, to wit, on ——— the
——— day of ——— in the ——— year of
the reign, &c. the said court of *Exchequer*
chamber having seen and diligently examined
and fully understood, as well the record and
process aforesaid, and the judgment thereupon
given, as the said causes assigned and alledged
for error by the said ——— it appeared unto
the said court of *Exchequer* chamber, that the
said record was in no ways vitious or defec-
tive, and that there was no error in the said
record: Therefore it was then and there con-
sidered by the said court of *Exchequer* cham-
ber, that the said judgment be in all things
affirmed, and stand in full force and effect
notwithstanding the said causes and matters
assigned for error by the said ———. *And* it
was also at the same time considered by the
same court, that the said ——— recover against
the said ——— ten pounds adjudged to the
said ——— by his own assent by the said
court, according to the form of the statute
in such case made and provided, for his da-
mages, costs and charges which he had sustain-
ed by reason of the delay of execution of the
said judgment on pretence of prosecuting the
said writ of error: *And* thereupon the said
record and proceedings of the justices of the
common bench and of the barons of the *Ex-
chequer*

*Costs occasione
dilationis exe-
cutionis.*

Remittitur.

chequer aforesaid, before them had in the premisses, were then remitted by the said justices and barons before our said lord the king wheresoever he then was in *England*, according to the form of the statute above-mentioned: And they now remain here in the court of our said lord the king, before the king himself.

As the court, &c. And prays the writ of *Scire facias* our said lord the king, to warn the said R. to ^{prayed and} be before our lord the king to hear the said ^{awarded} record and proceedings; And it is granted to him, &c. By which it is commanded to the sheriff of the county of *Surrey*, that by good and lawful men of his bailiwick he make known to the said R. that he be before our lord the king from the day of the *Holy Trinity* in fifteen days wheresoever he shall then be in *England*, to hear the record and proceedings aforesaid, if it shall seem expedient to him; And further to do and receive what the court of our lord the king before the king himself shall consider in that behalf; The same day is given to the said R. &c. At which day ^{Parties ap-} before our lord the king at *Westminster* came ^{pear.} the said R. by his attorney aforesaid; And the said R. on the fourth day of the plea being solemnly demanded, also came by G. C. his attorney; Upon which the said R. as before ^{Plaintiff in} says, that in the said record and proceedings, ^{error alledges} and also in giving the said judgment, there is ^{the errors ha-} manifest error, by alledging the said errors by ^{fore assigned,} him in form aforesaid alledged; and prays that the said judgment for those errors, and others

others being in the said record and proceedings, may be reversed, annulled and intirely held for nought, and that he may be restored to all that he has lost by occasion of the said judgment; and that the said *R. L.* may rejoin to those errors; and that the court of our lord the king here may proceed to examine as well the record and proceedings aforesaid, as the matter aforesaid above assigned for error;

Defendant in error says that the plaintiff was of full age.

Issue.
Venire
awarded;

Upon which the said *R.* says, that the said *R. L.* on the said twenty-ninth day of *July* in the twenty-ninth year aforesaid was of full age, and not under the age of one and twenty years, in manner and form as the said *R. L.* has above alledged; And he prays that this may be inquired of by the country; And the said *R. L.* does so likewise; Therefore it is commanded to the sheriff of the county of *Surrey*, that he cause to come before our lord the king from the day of the *Holy Trinity* in three weeks wheresoever, *Ec* twelve free and lawful men of the *Visne* of *Southwark* aforesaid in the county aforesaid, of whom each has twenty pounds of lands, tenements, or rents by the year at the least, by whom the truth of the matter may better be known, and who are no ways related either to the said *R. L.* or to the said *R. L.* to take cognizance upon their oaths, whether the said *R. L.* on the said twenty-ninth day of *July* in the twenty-ninth year aforesaid, was of the full age of one and twenty years or not; At which day before our lord the king at *Westminster* the said *R. L.* came by his attorney aforesaid; And the sheriff returned the said writ to him thereupon

Returned.

thereupon directed, together with a panel of the names of the jurors in all things served and executed, of whom none, &c. *Therefore* it is commanded to the sheriff, that he distrain the said jurors by, &c. and that of the issues, &c. so that he may have their bodies before our lord the king from* the day of St. Michael in three weeks wheresoever, &c. or before the justices of our said lord the king assigned to take the assises in the county aforesaid if they shall come before, on Wednesday the twenty-fourth day of July, at Rygate in the county aforesaid, by form of the statute, &c. for default of the jurors, &c. to make the said jury between the parties aforesaid, of the plea aforesaid: The same day is given to the said parties, &c. And be it known, that the writ of our said lord the king thereupon, on the nineteenth day of June in this same term, before our lord the king at Westminster, was delivered of record to the deputy sheriff of the county aforesaid, to be executed in form of law at his peril, &c.

Jurors make default.

Distringas awarded.

Nisi prius.

Le sciendum.

GEORGE the third, by the grace of God, of Great Britain, France and Ireland king, defender of the faith, &c. To his treasurer and barons of his Exchequer in Ireland, greeting. Forasmuch as in the record and process, as also in giving judgment in a plaint, which was before you our said barons in our Exchequer, by bill, between S. N. our

Writ of error to the Exchequer chamber in Ireland.

VOL. II.

E c

debtor,

* No such return. See Vol. 1. p. 63.

debtor and *M. R.* of a certain trespass and ejectment of farm done to the said *S.* by the said *M.* which said record and process, by reason of error intervening, we caused to come before the lord chancellor of *Ireland* and you the said treasurer and barons, into the chamber of council called the council chamber of the said *Exchequer* in *Ireland*, and judgment thereupon before the lord chancellor and you the said treasurer and barons is affirmed, as it is said, manifest error hath intervened, to the great damage of the said *M.* as by her complaint we are informed; we willing that the said error, if any be, be duly amended, and full and speedy justice done to the said parties in this behalf, *Do* command you that if judgment be given thereupon and affirmed, then you send to us distinctly and plainly into our parliament in *Great-Britain* the next session, to be held on *Thursday* the ninth day of *August* next ensuing, the record and process aforesaid, with all things touching the same, and this writ; that inspecting the record and process aforesaid, we may cause further to be done thereupon by the assent of the lords spiritual and temporal in the same parliament assembled for correcting the said error*, *as of right and according to the law and custom of England* shall be meet to be done. Witness Ourself at *Westmin-*

* Lilly p. 238, 271, 287, 290, 291. Quod de jure fuerit faciendum.

272, 287, 288. Quod de jure et secundum consuetudinem regni nostri *Hibernia* fuerit faciendum.

Westminster the nineteenth day of *June* in the thirteenth year of our reign.

Putland.

Indorsed by our lord the king.

Paid for this writ 6 l. 2 s.

Note ; The plaintiff in error, *M. R.* is an infant, and the suit below is by *W.* lord *H.* her guardian : But it seems the cursitors take no notice of infancy in a writ of error.

Judgments.

Afterwards, to wit, on *Friday* next after fifteen days of *St. Hilary* in the twenty-eight year of the reign of our said lord the king, before our said lord the king at *Westminster*, comes the said *Louise Po Line De Chaire*, otherwise called *Louise Pauline De Chaires*, by her attorney aforesaid : And because the said *John Marshall* hath neglected to bring the said issue, so above joined, on to be tried, according to the course and practice of the said court : *Therefore*, according to the form of the statute in such case lately made and provided, it is considered by the said court of our said lord the king now here, that the said *John Marshall* do take nothing by the said bill ; and that the said *John Marshall*

Judgment as in case of a nonsuit, pursuant to the late statute, plaintiff did not proceed to trial in due time. B. R. 27 Geo. 2. Rot. 485. Stat. 14 Geo. 2. c. 17.

Judgments.

shall, and his pledges of prosecuting, to wit, *John Doe* and *Richard Roe* be in mercy; and that the said *Louise Po Line De Cbaire*, otherwise called *Louise Pauline De Cbaire*, go thereof without day, &c. And it is further considered by the said court of our said lord the king now here, that the said *Louise Po Line De Cbaire*, otherwise called *Louise Pauline De Cbaire*, do recover against the said *John Marshall* seven pounds, adjudged by the said court of our said lord the king now here, according to the form of the said statute, to the said *Louise Po Line De Cbaire*, otherwise called *Louise Pauline De Cbaire*, for her costs and charges by her sustained about her defence in this behalf; and that the said *Louise Po Line De Cbaire*, otherwise called *Louise Pauline De Cbaire*, have her execution against him for the same.

Non prof. for
default of de-
claring.
Cliff's Entr.
419.

Norwich, to wit, *Timothy Lodge* who was arrested by writ of our lord the present king, of *latitat* issuing out of the court of our said lord the present king, before the king himself at *Westminster*, directed to the sheriffs of *Norwich*, returnable before our said lord the king at *Westminster*, on *Saturday* next after fifteen days of *St. Martin*, in *Michaelmas* term in the eighth year of the reign of our said lord the present king, at the suit of *Anthony Mingay* gent. in a plea of trespass, appeared on the same day by *Roger Seaman* his attorney, according to the form of the statute in such case made and provided: And the said *Anthony* did not exhibit in the same court
of

of our said lord the king, before the king himself, his bill or declaration in any personal action, or ejectment of farm, against the said *Timothy*, before the end of the next term next after the appearance of the said *Timothy*, at the suit of the said *Anthony* so as afore-said entered, neither hath he further prosecuted against the said *Timothy* upon his said writ: *Therefore* it is considered, that the said *Anthony* take nothing by his said writ, but that he be thereupon in mercy, &c. And it is further considered, that the said *Timothy* recover against the said *Anthony* twenty and three shillings for his costs and charges by him about his defence in this behalf sustained, adjudged to the said *Timothy* by the court of our said lord the king now here by his assent according to the form of the statute in such case lately made and provided; and that the said *Timothy* have execution thereof, &c.

And now at this day, that is to say, *Judgment in debt by nil dicit, with an imparlance.* Friday next after the morrow of the *Holy Trinity* in this same term, until which day the said *D.* had leave to imparle to the said bill, and then to answer thereto, before our lord the king at *Westminster* come the said *H.* and *A.* by their said attorney; and the said *D.* although at the same day solemnly demanded, does not come, but makes default, and does not say any thing in bar or denial of the said action of the said *H.* and *A.* whereby the said *H.* and *A.* remain therein undefended against the said *D.* Therefore it is considered, that the

Judgments.

said *H.* and *A.* recover against the said *D.* their said debt, and also five pounds for the damages which they have sustained, as well by reason of detaining their said debt, as for their costs and charges by them expended about their suit in this behalf, adjudged to the said *H.* and *A.* by the court of our said lord the king now here, with their assent: And the said *D.* in mercy, &c.

*Judgment by
nil dicit.*

And the said *A. B.* prays that the said *C. D.* may answer to his said declaration, upon which ——— next after ——— next ensuing is given by the court here to the said *C. D.* to plead in bar of the said action: The same day is given to the said *A. B.* at the same place, &c. At which day before our lord the king at *Westminster* the said *A. B.* came by his attorney aforesaid, and the said *C. D.* at that day, although solemnly demanded, came not to answer, nor did he say any thing in bar or preclusion, &c.

*Judgment by
nil dicit
against a pri-
soner, with an
imparlance.*

And the said *C. D.* in his proper person being in the custody of the marshal of the *Marshalsea* of our lord the king before the king himself, comes and defends the force and injury, when, &c. and prays a day thereupon to imparle, &c. and it is granted to him, &c. and upon that a day is thereupon given to the said parties before our lord the king at *Westminster*, until ——— next after ——— [the day when the rule was out] in this same term, to wit, to the said *C. D.* to imparl to the said bill, and then to answer, &c. At which day before our said lord the king at *Westminster*

the said *A. B.* came by his attorney aforesaid, and the said *C. D.* although at that day solemnly demanded, came not, and said nothing in bar or preclusion, &c.

Therefore it is considered, that the said *Judgment in T. E.* recover against the said *B.* and *C.* his *ejectment after* said term yet to come of and in the said *verdict for the* tenements, with the appurtenances, and his said *plaintiff.* damages assessed by the said jury in form aforesaid, and also, &c. [*ut in al'*] Which said damages in the whole amount to, &c.

Therefore it is considered, that the said *Judgment M. B.* recover against the said *M. C.* and *E.* *against baron* his wife his said debt, and his said damages *and feme ad-* assessed by the said jury in form aforesaid; *ministratrix,* and also six pounds by the court here adjudged *in case.* to the said *M.* of increase for his said costs and charges, by his assent: Which said damages in the whole amount to eight pounds and one shilling, to be levied of the goods and chattels which were of the said *S. D.* at the time of her death in the hands of the said *M. C.* and *E.* his wife to be administered, if they have so much thereof in their hands; and if they have not so much thereof in their hands, then the said damages to be levied of the proper goods and chattels of the said *M.* and *E.*

At which day before our lord the king *Judgment in* at *Westminster* the said parties come by their *debt by relict's* attornies aforesaid, and the sheriff of the said *verificatione.* county did not send back the said writ, nor did he any thing thereupon: And upon this

Judgments.

the said *D.* * relinquishing the plea by him the said *D.* as above pleaded, saith, that he cannot deny the action of the said *P.* nor that the said writing obligatory is his deed, nor that he oweth to the said *P.* the said sum of 148*l.* in manner and form as the said *P.* above declares against him: Therefore it is considered, that the said *P.* do recover against the said *D.* the said debt, and also 20*l.* for his damages which he hath sustained as well by reason of the detaining of the said debt, as for his costs and charges by him expended about his suit in this behalf, adjudged to the said *P.* by the court of our said lord the king now here, by his own assent: And the said *D.* in mercy, &c.

Judgment for the plaintiff in trespass and assault, where upon inspection of the wound the court assessed damages over and above the damages assessed by the jury.

Therefore it is considered; that the said *J. G.* recover against the said *T. W.* his said damages assessed by the said jury in form afore-said, and also thirty and eight pounds by the court of our lord the king before the king himself, now adjudged to the said *J. G.* at his request, of increase for his damages in this behalf, for that it seems to the said court, that

* Ejectment. Plea, Not guilty. Then the defendant *relit et verificazione* confessed the action, and his attorney subscribed the declaration accordingly. Motion, that the court would permit the plaintiff to enter judgment for himself. *Cur.*: The defendant's attorney ought to come in proper person before the master of the office, and do it there; and though it was urged that the attorney could not come by any possibility, yet the motion was denied. *Trin. 10 W. 3. B. R. 1 R. Raym. 345.*

that the said damages assessed by the said jury in form aforesaid are not sufficient, for that it manifestly appears to the said court upon inspection of the eye of the said J. G. that the said J. G. by occasion of the said trespass is very much injured in his said eye; and also fifteen pounds six shillings and eight pence for his costs and charges by the said court of our said lord the king now here adjudged of increase to the said J. by his assent: Which said damages in the whole amount to sixty and eight pounds.

At which day before our lord the king at *Westminster* the said parties come by their attornies aforesaid, and the said justices before whom the assises for the said county were taken sent here their record before them had in these words, to wit, Afterwards, &c. [the *Postea*] Therefore it is considered, that the said J. recover against the said R. the said 7 l. 10 s. part of the said debt of 19 l. 19 s. 6 d. for the triple value of the said tithes, and the said damages, so as aforesaid assessed by the said jury; and also 19 l. 19 s. for the increase of his said costs and charges, adjudged by the said court to the said J. by his assent, according to the form of the statute in such case made and provided: Which said damages amount in the whole to the sum of 22 l. and the said R. is in the mercy of the court; and the said J. is likewise in the mercy of the court for his false clamour against the said R. as to the residue of the said debt of 19 l. 19 s. 6 d. whereof he is acquitted by the said jury in manner

Judgment in debt on the Stat. Ed. 6. for not setting out tithes, part for the plaintiff, and part for the defendant.

manner aforesaid, and that the said R. go thereof without day.

*Judgment in
debt for the
plaintiff on a
demurrer in
abatement to
a declaration.*

At which day before our lord the king at *Westminster* the said parties come by their attornies aforesaid: Whereupon the said court having seen and fully understood all and singular the premisses, and having maturely deliberated thereupon, it appeared to the said court now here, that the said declaration of the said master, wardens and commonalty, and the matter therein contained, are good and sufficient in law for the said master, wardens and commonalty, to have and maintain their said action against the said T. Therefore it is considered, that the said master, wardens and commonalty, do recover against the said T. their said debt, and also eight pounds for their damages which they have sustained, as well by reason of detaining that debt as for their costs and charges by them expended about their suit in this behalf, adjudged to the said master, wardens and commonalty by the court of our said lord the king now here, with their assent; And the said T. in mercy, &c.

*Judgment for
the plaintiff
for costs 8l.
Stamp upon
the paper book,
11 Feb. 1741.*

*Judgment in
debt for the
plaintiffs on a
demurrer to a
plea in bar to
a scire facias
against an
executor.*

At which day come before our lord the king at *Westminster* as well the said H. S. and J. S. in their proper persons, as the said T. H. by his attorney aforesaid; and hereupon all and singular the premisses having been seen and fully understood by the court of the now lord the king here, and due deliberation having been thereupon had, it appears to the court of our said lord the king here, that the plea aforesaid by the said T. H. in manner and form

form aforesaid above pleaded, and the matter therein contained, are not sufficient in law to bar the said *H. S.* and *J. S.* from having their said execution against him for the debt and damages aforesaid; Therefore it is considered, that the said *H. S.* and *J. S.* have execution against the said *T. H.* for the debt and damages aforesaid, to be levied of the goods which were the said *N. H.*'s at the time of his death, in the hands of the said *T. H.* to be administered, according to the force, form and effect of the recovery aforesaid; It is also considered, that the said *H. S.* and *J. S.* recover against the said *T. H.* 10*l.* for their costs of suit, according to the form of the statute in 8 & 9 W. 3. such cases made and provided; for that the said *H. S.* and *J. S.* have obtained an award of the execution aforesaid, after the said plea pleaded by the said *T. H.* in bar thereof, to be levied of the same goods and chattels, if the said *T. H.* have so much thereof in his hands to be administered; and if he hath not, then the said 10*l.* to be levied of the proper goods and chattels of the said *T. H.* and that the said *H. S.* and *J. S.* have also execution thereof, &c.

Therefore it is considered, that the said *W.* Judgment on take nothing by his said bill, but that he be a verdict for in the mercy of the court for his false clamour, the defendant, and that the said *D.* go thereof without day; And it is further considered, that the said *D.* recover against the said *P.* ——— for his costs and charges laid out by him about his defence on this behalf, adjudged to the said *D.* by the court of our said lord the king now here, by his

his own assent, according to the form of the statute in such case made and provided, and that the said *D.* have execution thereof.

*Judgment in
ejectment, part
for the plain-
tiff, and part
for the defen-
dant.*

Therefore it is considered, that the said *J. M.* do recover against the said *W. H.* and *H.* his term aforesaid yet to come and unexpired of and in the said moiety of one mesuage, one garden, sixty acres of meadow, and sixty acres of pasture, with the appurtenances in the first count in the said declaration mentioned, and the said damages so as aforesaid assessed by the said jury, and also 13 *l.* 19 *s.* for the increase of the said costs and charges, adjudged by the said court to the said *J.* at his own request; which said damages amount in the whole to the sum of 16 *l.* and that the said *J.* be in the mercy of the court for his false clamour against the said *W. H.* and *H.* as to the trespass and ejectment in the rest of the tenements, with the appurtenances in the declaration aforesaid specified, whereof the said *W. H.* and *H.* are by the said jury in form aforesaid acquitted, and that the aforesaid *W. H.* and *H.* go thereof without day.

*Judgment in
debt, part
for the plain-
tiff, part for
the defendant.*

Therefore it is considered, that the said Sir *B.* do recover against the said *W.* the said sum of 7 *l.* parcel of the said debt of 40 *l.* found by the said jury in manner aforesaid, and the said damages so as aforesaid assessed by the said jury, and also 27 *l.* 19 *s.* 6 *d.* for the increase of his said costs and charges, adjudged to the said Sir *B.* by the said court of our lord the king now here by his assent; which said damages amount in the whole to 30 *l.* and that the said *W.* be in the mercy of the court; and

and also that the said Sir B. be in the mercy of the court for his false clamour against the said W. as to the said sum of 33*l.* residue of the said debt of 40*l.* whereof the said W. is acquitted by the said jury in manner aforesaid, and that the said W. go thereof without day.

Therefore it is considered, that as to the first *Judgment in* issue between the said parties in form afore- *assault, part* said joined, the said J. recover against the said *for the plain-* W. the said damages so as aforesaid assessed *tiff, part for* by the said jury; and also 18*l.* 19*s.* for the *the defendant.* increase of his said costs and charges, adjudged by the said court to the said J. at his request; which said damages amount in the whole to the sum of 22*l.* and that the said J. be in the mercy of the court for his false claim against the said W. as to the said second issue between the parties aforesaid in form aforesaid joined, whereof the said W. is by the said jury in form aforesaid acquitted, and that the said W. go thereof without day.

Therefore it is considered, that the said *Judgment in* T. P. do recover against the said C. B. J. B. *assault, part* and J. P. his term aforesaid, yet to come and *for the plain-* unexpired, of and in the said tenements, with *tiff, part for* the appurtenances, in the said declaration se- *the defendant.* condly mentioned, and expressed to be demi- *assault, part* sed by the said J. C. and M. his wife; and *for the plain-* the said damages so as aforesaid assessed by *tiff, part for* the said jury, and also 13*l.* 19*s.* for the in- *the defendant.* crease of his said costs and charges adjudged by the said court to the said T. P. at his request, which said damages amount in the whole to 16*l.* And the said T. P. is in mercy, &c. for his false claiming against the said C. B.

Judgments.

C. B. J. B. and J. P. as to the trespass and ejectment in the said several tenements with the appurtenances in the said declaration first above-mentioned; and also as to the trespass and ejectment in the said tenements with the appurtenances in the said declaration thirdly mentioned, whereof the said *C. B. J. B. and J. P.* are by the said jury in manner aforesaid acquitted; And let the said *C. B. J. B. and J. P.* go thereof without day, &c.

Friday next after the octave of the purification of the blessed virgin Mary in the fifteenth year of king George the second.

*Rule by consent
in ejectment by
original.*

R. J. T. is ordered, by the consent of the *D. J. I.* attornies of both parties, that *J. B. gent. W. G. T. R. S. L. T. G. and J. S.* be made defendants in the stead of the now defendant *D.* and do forthwith appear at the suit of the plaintiff, and receive a declaration in an action of trespass and ejectment for the premisses in question, and forthwith plead thereto Not guilty; and upon the trial of the issue, confess lease, entry and ouster, and insist upon the title only; otherwise let judgment be entered for the plaintiff against the now defendant *D.* by default; and if upon the trial of the issue the said *J. W. T. S. T. and J.* shall not confess lease, entry and ouster, whereby the plaintiff shall not be able further to prosecute his writ against the said *J. W.*

J. W. T. S. T. and *J.* then no cost shall be allowed for not further prosecuting the same; but the said *J. W. T. S. T.* and *J.* shall pay cost to the plaintiff in that case to be taxed; And it is further ordered, that if upon the trial of the said issue a verdict shall be given for the said *J. W. T. S. T.* and *J.* or it shall happen that the said plaintiff shall not further prosecute his said writ for any other cause than for not confessing lease, entry and ouster, then the lessor of the plaintiff shall pay to the said *J. W. T. S. T.* and *J.* costs in that behalf to be adjudged.

By the court.

H. FROM which day the said jury between *Trial at bar.*
T. the parties aforesaid, of the plea aforesaid, was thereupon respited between them before our lord the king at *Westminster*, until *Monday* next after three weeks of *Easter* thence next ensuing, for default of the jurors, &c.
 At which day before our lord the king at *Westminster* the said parties come by their attornies aforesaid, and the jurors of that jury *Verdict.*
 being demanded, also come; who to speak the truth of the premisses, being chosen, tried and sworn, say upon their oath, as to the first *As to the first issue.*
 issue between the said *J. T.* and the said Sir *C. H.* bart. above joined in form aforesaid, that the said *E. B.* at the time of executing the deed of bargain and sale and release above-mentioned, was of sufficient memory and understanding to execute such conveyance;
 And

*As to the second
issue.*

And as to the second issue between the said *J. T.* and the said *Sir C. H. bart.* above also joined in form aforesaid, the said jury upon their said oath further say, that the said *E. B.* well understood the contents of the said deed of bargain and sale and release above-mentioned, and approved of them at the time of the execution thereof, as the said *Sir C. H.* by pleading for himself has above thereupon alledged;

*As to the third
issue.*

And as to the third issue between the said *J. T.* and the said *J. H.* also above joined in form aforesaid, the said jurors upon their said oath also further say, that the said *E. B.* at the time of executing the said lease above-mentioned, was of sufficient memory and understanding to execute such lease;

Fourth issue.

And as to the fourth issue between the said *J. T.* and the said *J. H.* above also joined in form aforesaid, the said jurors upon their said oath further say, that the said *E. B.* well understood the contents of the said lease above-mentioned, and approved the same at the time of the execution thereof, as the said *J. H.* by pleading for himself has above thereupon alledged.

*Trial at bar
with a decem
tales.*

On which day the jury between the parties aforesaid, of the plea aforesaid, was respited between them before our lord the king, until *Wednesday* next after three weeks from *Easter* day thence next ensuing, for the default of the jurors; At which day before our lord the king at *Westminster* the said parties come by their attornies aforesaid, and the jurors of the jury above-mentioned being called, some of them, to wit, *Sir G. F. bart.* *Sir J. C. bart.*

Sir

Sir J. H. bart. N. W. R. L. J. D. H. S. J. B. H. J. and L. L. esquires, come, and the residue of the said jury do not come, as appears in the panel: And because the residue of the jurors of the said jury did not appear, therefore let the said jury further remain to be taken before our lord the king at *Westminster*, until *Tuesday* next after five weeks from the feast-day of *Easter* then next following for the default of the jurors: Therefore let the sheriff have their bodies, &c. and let him add ten other free and lawful men of the body of his county to make his said jury, together with the said other jury in form aforesaid impanelled, so that he have them at the said day for the default of the jurors not remaining to be taken, &c. The same day is given to the parties aforesaid at the same place: At which day before our lord the king at *Westminster* the said parties come by their attornies aforesaid, and the sheriff at the same day returned the said writ in all things served and executed, together with a panel of the said ten other free and lawful men, as appears in the panel, and the jurors so anew appointed, to wit, G. D. and I. A. being called likewise come, who to speak the truth of the premisses, together with the said jurors first for that purpose impanelled, being elected, tried and sworn, say upon their oath, that the said W. J. by will bearing date the eighteenth day of *January* in the year of our Lord 1731, did devise the said above-mentioned premisses to the said M. S. and they assess the damages of the said M. by reason of the premisses, be-

Judgments.

sides her costs and charges laid out by her about her suit in this behalf, to twelve pounds, and for those costs and charges to forty shillings.

Scire facias vic' London against the tenants of F. R. on a judgment recovered against him by J. D. Return Nihil. Testatum Vic' Ebor'. Vic' non misit breve. Alias sci. fac. Return Sci. feci to Sir S. D. tenant of part, and to J. R. tenant of other part.

Judgment on a sci. fac. against tertenants, where two are returned tenants, one making default, and the other pleads to issue. B. R.

Elegit prayed against him,

AND now here at this day, to wit, the said Saturday next after three weeks of St. Michael, before the lord the king at Westminster came as well the said J. D. by his attorney aforesaid, as the said Sir J. D. by S. W. his attorney, and the said J. R. so summoned, &c. at the same day, being solemnly called, came not, but made default. Therefore it is considered, that the said J. D. have execution against the said J. R. of the debt and damages aforesaid of the lands and tenements whereof the said J. R. is above returned tenant, which were of the said F. R. of which the said F. R. was seised at the time of giving the said judgment, being in the hands of the said J. R. by the default of the said J. R. And upon this the said J. D. by the statute, &c. chuseth to be delivered to him a moiety of all the said lands and tenements with the appur

appurtenances, whereof the said *J. R.* so as
aforesaid is returned tenant, which were of
the said *F. R.* at the time of giving the said
judgment, To hold to the said *J. D.* and his
assigns, as their freehold, according to the
form of the statute, until the debt and da-
mages aforesaid shall be thereof levied, and
he prayeth the writ of the said lord the king
thereupon, to be directed to the said sheriff
of *York*; and it is granted him, &c. return-
able before the lord the king on *Saturday* next
after the octave of the purification of the
blessed virgin *Mary*, &c. *and awarded.*

And the said Sir *J. D.* saith, &c. At which *The other de-*
day before the lord the king at *Westminster* *endant pleads*
the said parties come by their attornies afore-
said, upon which all and singular the premis-
ses being seen and fully understood by the
court of the said lord the king here, and ma-
ture deliberation being held thereupon, it
seemeth to the court of the said lord the king
here, that the plea of the said *W. P.* above
pleaded in bar of the said action of the said
D. W. is not sufficient in law to preclude the
said *D.* from having her said action against
the said *W. P.* Therefore it is considered,
that the said *D.* recover against the said *W.*
her said debt and also nine pounds for her da-
mages which she hath sustained as well by
the occasion of the detaining that debt, as for
her costs and charges expended by her about
her suit in this behalf adjudged by the court
of the said lord the king now here to the
said *D.* by her assent. And the said *W. P.*
in mercy, &c. *judgment in
debt for the
plaintiff on a
demurrer to a
plea. B. R.*

*Judgment of
Respondeas
ouster on a
demurrer to a
plea in abate-
ment in case.*
B. R.

At which day before the lord the king at *Westminster* cometh as well the said *T. S.* in his proper person, as the said *T. K.* and *B.* by their attornies aforesaid; upon which, all and singular the premisses being seen and by the court here fully understood, and mature deliberation being had thereupon, for that it seemeth to the said court of the lord the king now here, that the said plea above pleaded by the said *T. K.* and *B.* in manner and form aforesaid, and the matter in the same contained, are not sufficient to quash the bill of the said *T. S.* thereupon against the said *T. K.* and *B.* *It is considered*, that the said *T. K.* and *B.* answer further to the said bill of the said *T. S.* *And* upon this the said *T. K.* and *B.* being solemnly demanded, come by *J. G.* their attorney, and defend the force and injury, when, &c. and pray, &c. [*Demurrer.*]

*Judgment of
Respondeas
ouster on a
demurrer to a
replication on
a plea in a-
batement.*
B. R.

At which day before the lord the king at *Westminster* came the parties aforesaid, by their attornies aforesaid, whereupon all and singular the premisses aforesaid being seen and by the court here fully understood, and mature deliberation being had thereupon, for that it seemeth to the said court of the lord the king now here, that the said plea by the said *R.* in manner and form aforesaid above in replying pleaded, and the matter therein contained, are good and sufficient in law to compel the said Sir *J.* to answer farther to the said bill of the said *R.* thereupon against the said Sir *J.* *It is considered*, that the said Sir *J.* answer further to the said bill of the said *R.* *And* hereupon the said Sir *J. S.* knt.

knt. and bart. against whom the said R. above declared, by the name of Sir J. S. bart. being solemnly called by the said H. T. his attorney cometh and defendeth the force and injury, when, &c. and saith, &c.

At which day before our lord the king at *Judgment of Westminster* cometh the said D. by his attorney afore-^{non pros for}said, and the said P. altho' called ^{not proceeding}cometh not; and it appearing to the court of ^{to trial.} our said lord the king now here, that the said P. hath neglected to bring the issue above joined on to be tried, according to the course and practice of the said court of our said lord the king now here: *Therefore* according to Stat. 14 Geo. the form of the statute in that case lately made 2. c. 17. and provided, it is considered by the said court, that the said P. take nothing by his afore-^{said} bill, but that he and his pledges for prosecuting, *to wit*, John Doe and Richard Roe, be in mercy, &c. and that the said D. go thereof without day; and it is further considered that the said D. recover against the said P. 7 l. for his costs and charges by him about his defence in this behalf sustained, adjudged by the court of our said lord the king now here to the said D. at his request, according to the form of the statute in the like case made and provided, and that the said D. have execution thereof. *Afterwards*, ^{Judgment of} &c. [the Postea] and upon this the said W. ^{repleader after}saith, that the court of our said lord the king ^{verdict for the}now here ought not to proceed to give judgment upon the said verdict, because he saith ^{plaintiff.}that the said plea of the said A. above in ^{B. R.}joining pleaded is not sufficient in law, and

the issue arising thereupon is not aptly joined; upon which the said plea by the said *A.* above in surrejoining pleaded, and the issue thereupon joined, being seen and understood by the court of the said lord the king before the king himself, it sufficiently appeareth to the court of the said lord the king, now here, that the said plea above in surrejoining pleaded, is insufficient, and that the issue arising thereupon is not aptly joined; upon which it is told to the said parties to replead, to wit, to the said *A.* to surrejoin anew to the said rejoinder of the said *W.* and that the said parties further proceed thereupon until an issue by the law, or by the country, shall be thereupon joined. *Upon which the said A. as at first saith, &c.*

Nolle prosequi after verdict as to two defendants.

3 Mod. 101.

Carl. 19.

Comb. 18, 39.

2 Show. 469.

Cro. Car. 54.

239, 243.

2 R. Ab. 100.

1 R. Rep. 30.

1 Bull. 157.

Styles 299.

1 Sand. 275,

268.

2 Sand. 379.

Rast. Ent.

127. a. 654.

b 677 b.

583. a. 555. a.

Case against E. S. T. P. and H. M. for accusing G. R. of high treason; M. lets judgment go by default, and the other two plead to issue; the jury give damages 1000 l. against S. 500 l. against P. and 500 l. against M. whereupon the plaintiff enters a Nolle prosequi as to P. and M. and has judgment against S.

And upon this the said G. in court here confesseth that he will not further prosecute against the said T. P. and H. M. or either of them of the plea aforesaid, but wholly disavoweth and refuseth to prosecute further against either of them in the premisses; Therefore it is considered that the said G. R. recover

cover against the said *E. S.* the said damages Co. Ent. 650.
 assessed by the said jury in form aforesaid, Trin. 38 Eliz.
 and also by the court of the said ro. 634.
 lord the king now here adjudged to the said Hil. 1 Car.
G. by his assent of increase for his said costs ro. 582.
 and charges; which said damages in the judgment a-
 whole amount to gainst the 3d
 and that the said deft. B. R.
E. S. be taken, &c.

Postea.

John Hawe lessee of *Joshua Tesdale* against
William Burton and *Mary* his wife.

Trin. 3 Jac. 2. B. R. ro. 1038.

Afterwards on the day and at the place Postea, special
 within contained before Sir *R. H.* knight, verdict in e-
 one of the justices of the lord the king judgment. B. R.
 assigned to hold pleas before the king himself, Comb. 84.
 and Sir *T. J.* knight. one of the barons of the
Exchequer of the said lord the king, justices of
 the said lord the king, assigned to take the
 assises in the county of *B.* by form of the
 statute, &c. cometh as well the within na-
 med *J. H.* as the within written *W. B.* and
M. his wife by their attornies within con-
 tained; and the jurors of the jury, whereof
 mention is within made, being demanded,

Tales.

Verdict.

C. T. seised
in fee.

Made his will.

some of them, *to wit*, N. P. T. P. R. B. J. F. T. P. R. L. R. W. R. J. T. H. J. P. and J. W. come and are sworn on that jury; and because the residue of the jurors of that jury do not appear, therefore another of the persons standing around hereunto elected by the sheriff of the county aforesaid, is added a-new at the request of the said J. H. and by the command of the said justices, whose name is affixed in the panel within written, according to the form of the statute in such case lately made and provided; and the juror so added a-new, *to wit*, T. E. being demanded also cometh, who together with the said other jurors first impanelled and sworn, being chosen, tried and sworn to speak the truth of the within contained, *say* upon their oath, that one C. T. late husband of the said M. in his life time, was seised of and in the tenements within written, with the appurtenances in his demesne as of fee; and being so seised thereof, afterwards, and before the within written time in which it is supposed the trespass and ejectment within written was done, *to wit*, on the 18th day of October in the 36th year of the reign of the Lord Charles II. late king of England, &c. made his testament and last will in writing; and that the said C. in his life-time then signed, sealed, published and declared that testament before four lawful and credible witnesses, and that that testament was then attested and subscribed by the same four lawful and credible witnesses in the presence of the same C. *to wit*, at A. within written, as

the law requireth: And the said C. by his *Gave to the*
 said testament gave to the said M. the tene- *defendant M.*
 ments within written amongst others, in spe- *in tail.*
 cial tail, the tenor of which said last will of
 the said C. followeth in these words, *In the The will.*
name of God, &c. [the will in hac verba] *Testator then*
 And the said jurors upon their said oath fur- *under 21.*
 ther say, that the said C. in his life-time,
 at the said time of making and publishing
 his said testament was within the age of 21
 years, *to wit,* of the age of 20 years, and
 not more; and that the said C. in his life- *Republished at*
 time afterwards, being of the age of 21 years *his full age.*
 and more, he a-new published and declared
 his said testament made as aforesaid, to stand
 and be his last will, in the presence of three *In the presence*
 legal credible witnesses then there present, as *of three wit-*
 the law requireth, *to wit,* at the parish with- *nesses.*
 in written; but the testament of the said C. *But the will*
 was not then produced before the same wit- *not produced,*
 nesses, neither did the same witnesses then *neither did the*
 and there subscribe their names to the testi- *witnesses sub-*
 fication and publication of the same; and *scribe their*
 that afterwards the said C. died, being seised *names.*
 of the same tenements as aforesaid. *Testator died*
 And the said jury upon their said oath further say, that *seised.*
 the within named J. T. is cousin and heir of *Lessor of plt.*
 the said C. *heir of testator.*
 And the said jury upon their said *Defendant M.*
 oath further say, that the said M. now de- *entered.*
 fendant was wife of the said C. in his life-
 time, after whose death she entered into the
 within written tenements, and was seised
 thereof, as the law requireth: *And after-*
 wards the said M. was joined in wedlock *Married with*
 with the said W. B. and afterwards the said *the other de-*
fendant who
entered in her
W. right.

*Lessor of the
plt. entered.*

*Leases to the
plaintiff.*

Plt. enters.

*Ejected by de-
fendants.*

W. entered into the within written tenements with the appurtenances, and was seised thereof in the right of the said *M.* as the law requireth. And the said *W.* and *M.* so seised, and afterwards and before the within written time in which, &c. the said *J. T.* entered into the tenements within written, with the appurtenances, and was seised thereof as the law requireth; and being so seised thereof, the said *J.* afterwards, to wit, on the within written 1st day of *October* in the 2d year of the reign of the lord *James II.* then king of *England*, &c. at *A.* within written, demised, granted, and to farm let to the said *J. H.* the tenements within written with the appurtenances, To have and to hold the tenements within written with the appurtenances to the said *J. H.* and his assigns from the feast of *St. Michael* the archangel then last past until the full end and term of seven years thence next following fully to be complete and ended: By virtue of which said demise the said *J. H.* entered into the within written tenements with the appurtenances, and was possessed thereof, as the law requireth, until the said *W. B.* and *M.* afterwards, to wit, on the said 1st day of *October* in the 2d year abovesaid, at *A.* abovesaid, with force and arms, &c. entered into the tenements within written, with the appurtenances, in and upon the possession of the said *J. H.* thereof, and him the said *J. H.* from his said farm, his said term therein not yet ended, ejected, drove out and amoved, as the said *J. H.* within complaineth against

against them. *But whether* upon the whole matter aforesaid above found in form aforesaid, the said *W.* and *M.* are guilty in law of the trespass and ejectment aforesaid or not, the said jurors are intirely ignorant, and pray the advice of the court here. *And if* upon the whole matter aforesaid found in form aforesaid, it shall seem to the court here, that the said *W.* and *M.* are guilty in law of the trespass and ejectment within written, *then* the said jurors say, upon their said oath, that the said *W.* and *M.* are guilty of the said trespass and ejectment, as the said *J. H.* within complaineth against them: And they assess the damages of the said *X.* on that occasion, besides his costs and charges expended by him about his suit in this behalf to 6*d.* and for those costs and charges to 40*s.* *And if* upon the whole matter aforesaid above found in form aforesaid, it shall seem to the court here that the said *W.* and *M.* are not guilty in law of the trespass and ejectment aforesaid, *then* the said jurors say upon their said oath, that the said *W.* and *M.* are not guilty of the trespass and ejectment aforesaid, as they within in pleading for themselves have alledged.

Replevin.

Replevin.

B. R. Decla-
ration in Re-
plevin.

Lill. Ent. 356.

Middlesex,
to wit.

R.

H. was summoned to answer *R. H.* of a plea, wherefore he took the goods and chattels of the said *R. H.* and them unjustly detained against gages and pledges until, &c. And whereupon the said *R. H.* by *J. P.* his attorney complains, that the said *R. H.* on the seventh day of *October* in the second year of the reign of our sovereign lord and lady *William* and *Mary* now king and queen of *England*, &c. at the parish of *St. Margaret, Westminster*, in the county aforesaid, in a certain place there called *Peter-street*, took the goods and chattels following, to wit, one jack, two spits, eighteen pewter plates, &c. (reciting the other particulars) of the said *R. H.* and them unjustly detained against gages and pledges until, &c. Wherefore the said *R. H.* says, that he is injured, and has damages to the value of twenty pounds: And thereupon he brings suit, &c.

Avowry for
rent arrear.

And the said *R. H.* by *K.* his attorney, comes and defends the force and injury, when, &c. and well avows the taking the said goods and chattels in the said place, in which, &c. and justly, &c. because he says that the same place, in which the taking the said goods and chattels is supposed to be done, contains, and at the same time in which the taking the said goods and chattels is supposed to be done, contained in itself a certain piece or parcel of land

land with the appurtenances in the place called *Peter-street* aforesaid, otherwise *Bowling-alley*, at the parish of *St. Margaret Westminster* aforesaid, in the county aforesaid; of which said piece or parcel of land, with the appurtenances before the said time, in which, &c. one Sir *R. M.* knt. was seised in his demesne as of fee; and being so seised the said Sir *R.* before the said time in which, &c. to wit, on the sixteenth day of *May* in the first year of the reign of our lord and lady the present king and queen, at the parish of *St. Margaret Westminster* aforesaid, in the county aforesaid, demised the said piece or parcel of land, with the appurtenances, to the said *R. H.* To hold to the said *R.* and his assigns from the feast day of the annunciation of the blessed virgin *Mary* then last past, before the date of the said lease, for the term of fifty and one years thence next ensuing and fully to be complete and ended; by virtue of which said demise the said *R. H.* was possessed of the said piece or parcel of land for the term aforesaid; and being so thereof possessed, the said *R. H.* afterwards and before the said time in which, &c. erected and built a mesuage or tenement upon the said piece or parcel of land, and was thereof possessed; and being so thereof possessed he the said *R. H.* before the said time in which, &c. to wit, on the twentieth day of *December* in the said first year of the reign of our said lord and lady the present king and queen, demised the said mesuage with the appurtenances, to the said *R. H.* from the feast of the birth of our Lord then next following, for the term of one year thence next ensuing
fully

fully to be complete and ended: Yielding therefore for the said year to the said *R. H.* or his assigns, the rent of fifteen pounds of lawful money of *England* at the four most usual feasts in the year, to wit, at the feast of the annunciation of the blessed virgin *Mary*, the nativity of *St. John* the baptist, *St. Michael* the archangel, and the nativity of our Lord, by even end equal portions: By virtue of which said demise the said *R. H.* entered into the said mesuage with the appurtenances, and was possessed thereof, and occupied the said mesuage with the appurtenances by the space of three quarters of a year: And because the sum of *11 l. 5 s.* of the said rent after the said demise so made, for the said three quarters of a year, at the feast of *St. Michael* last past and before the taking the said goods and chattels, were in arrear and unpaid to the said *R. H.* the said *R. H.* well avows the taking the said goods and chattels in the said place, in which, &c. and justly, &c. for the said *11 l. 5 s.* being in arrear to the said *R. H.* in form aforesaid, as in the said mesuage with the appurtenances bound and liable to the distress of the said *R. H.* in form aforesaid: And this he is ready to verify: Wherefore he prays judgment, and a return of the said goods and chattels to be adjudged to him, &c.

*Replication no
rent arrear.*

And the said *R. H.* says, that the said *R. H.* by the reason before alledged, ought not to well avow the taking the goods and chattels aforesaid in the said place, in which, &c. because he says, that the said *11 l. 5 s.* or any part thereof, of the rent aforesaid at the said time in which &c. was not in arrear

or

or unpaid to the said *R. H.* as the said *R. H.* in his said avowry has above alledged: And this he prays may be inquired of by the country: And the said *R. H.* does so likewise, &c. *Issue.*
Therefore it is commanded to the sheriff, that he cause to come before our lord the king and lady the queen from the day of the *Holy* *Venire*
Trinity in three weeks wheresoever, &c. *awarded.*
twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c.
The same day is given to the said parties, &c.
At which day before our lord the king and lady the queen at *Westminster* the said parties *Vic' non misit breve.*
came by their attornies aforesaid, and the sheriff did not fend the writ, nor did he do any thing thereupon: *Therefore* as before it is *Award of Venire de novo.*
commanded to the sheriff, that he cause to come before our lord the king and lady the queen from the day of *St. Michael* in three weeks wheresoever, &c. *twelve*, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the said parties, &c.

Mich. 9^{W.} Roll 48.

Middlesex, *J. T. R. W.* and *W. S.* were summoned to answer *J. W.* of a *Declaration in Replewin.*
to wit, *J.* moned to answer *J. W.* of a plea, wherefore they took a silver porringer of the said *J.*'s and unjustly detained the same against gages and pledges, &c. *And* *Lill. Ent 349. Pr. Reg. 157.*
whereupon the said *T.* by *J. L.* his attorney complains that the said *J. R.* and *W.* on the first day of *May* in the ninth year of the reign of

of our lord *William* the third now king of *England*, &c. in the *Charter-house* in the county of *Middlesex* aforesaid, in a certain place there called the dwelling house of the said *T.* took the said cup of the said *T.* and unjustly detained it against gages and pledges and until, &c. Wherefore the said *T.* says, that he is injured, and hath damage to the value of 30 *l.* and thereupon he brings suit, &c.

*Cognizance a
distress for a
poors rate.*

And the said *J. R.* and *W.* by *R. H.* their attorney come and defend the force and injury, when, &c. and well acknowledge the taking the said cup in the said place in which, &c. and justly, &c. because they say, that at the said time in which, &c. the said *J.* and *R.* being overseers of the poor of the parish of *St. Sepulchre* in the said county of *Middlesex*, by virtue of a warrant under the hands and seals of *W. W.* esq; and *T. S.* esq; two justices of our lord the present king, assigned to keep the peace in the county aforesaid (of whom one, &c.) directed to the church-wardens and overseers of the poor of the said parish, or any of them, at the said place in which, &c. demanded of the said *T.* *W.* to pay to them 10*s.* 6*d.* of lawful money duly charged upon him towards the relief of the poor of the said parish, by authority, and according to the tenor, purport and effect of a certain statute lately made and provided in a parliament of our lady queen *Elizabeth* held at *Westminster* in the county of *Middlesex* in the forty-third year of her reign; and because the said *T.* then and there refused to pay to the

Stat. 43 Eilz.
c. 2. f. 19.

the said *J.* and *R.* the said 10 s. 6 d. the said *J.* and *R.* as overseers of the said poor, and the said *W.* at their request and in their aid for keeping the peace of our said lord the king (the said *W.* being then a constable within the said parish) by force of the statute and warrant aforesaid, well avow the taking the said cup at the said time in which, &c. in the said place in which, &c. in the name of a distress for the said 10 s. 6 d. charged as aforesaid upon the said *T.* towards the relief of the poor of the said parish, then being in arrear and unpaid, and justly, &c. And this they are ready to verify: Wherefore they pray judgment, and a return of the said cup to be adjudged to them, &c.

And the said *T.* says, that the said *J. R.* *Replication de* and *W.* by the reason before alledged, ought *injuria sua* not to acknowledge the taking the said cup *propria.* of the said *T.* in the said place in which, &c. as just, because he says, that the said *J. R.* and *W.* on the day and year aforesaid in the said declaration mentioned, of their own proper injury, without the cause by them in their said avowry abovementioned, took the said cup of the said *T.* in the said place in which, &c. and unjustly detain it against gages and pledges, &c. in manner and form as the said *T.* above complains against them: And this he prays may be inquired of by the country: And the said *J. R.* and *W.* do so likewise, &c. Therefore, &c. *Issue.*

*Memorandum
of a plaint in
replevin in
the county
court.*

Lill. Ent. 349.

*removed by
Recordari
into B. R.*

Declaration.

Kent, BE it remembered, that T. J. and J. J. heretofore in the court of the sheriff of the county of Kent held at Penenden in the same county, complained against W. L. of a plea of taking and unjustly detaining the goods and chattels of the said T. and J. and they found pledges for prosecuting, and also for returning the said goods and chattels, if a return should be thereupon adjudged, to wit, J. J. and T. C. which said plaint at the prayer of the said W. by virtue of the writ of our lady the queen of recordari facias loquelam, was had before our lady the queen at Westminster on the morrow of the Ascension of our Lord last past; and the process thereupon being continued unto this day, to wit, to the morrow of the Holy Trinity in this same term, now at this day before our lady the queen at Westminster come as well the said T. and J. by T. P. their attorney, as the said W. L. by J. W. his attorney; And upon this the said T. and J. complain of the said W. of a plea, to wit, that the said W. on the twentieth day of February in the fourth year of the reign of our lady Anne, now queen of England, &c. at the parish of Warden in the county aforesaid, in a certain place there called the sea shore, took the goods and chattels of the said T. and J. to wit, 580 bars of iron, and them unjustly detained against gages and pledges, until, &c. Wherefore they say that they are injured, and have damage to the value of 450 l. And thereupon they bring suit, &c.

And

And the said *W.* by *J. W.* his attorney, *Avowry for*
comes and defends the force and injury, when, *salvage.*
Et c. and well avows the taking the goods
and chattels in the said declaration above-
mentioned in the said place in which, *Et c.*
and the detaining thereof, *Et c.* and justly, *Et c.*
because he says, that the said goods and
chattels, together with certain other goods
and chattels before the said time in which,
Et c. to wit, on the fifteenth day of *November*
in the fourth year of the reign of our lady
Anne, now queen of *England*, *Et c.* at *Gotten-*
burgh in the kingdom of *Sweden* in parts be-
yond the seas, were loaden on board a cer-
tain ship called the *Corn Drogger* of *Gotten-*
burgh afore said in the kingdom of *Sweden*
afore said, then floating in and upon the high
seas near the isle of *Sheppey* in the county
of *Kent* afore said; and that the said ship so
as afore said floating there, afterwards, to wit,
on the same day and year, a great storm arose
there, and so violently drove the said ship on
the shore of the said island, to wit, at the
parish of *Walden* in the county afore said, that
the said ship, and also all the said goods and
chattels then loaden on board the same as
afore said, and also all the men and persons
then and there being in the same ship, were
then and there almost sunk, and in great
danger of intirely perishing, so that the said
men and all other persons in the said ship,
who then and there had the care and ought
to have taken care of the said ship, or of the
said goods and chattels, to preserve themselves

then and there deserted and left the said ship, together with all the said goods and chattels on board the same: and the said *W.* further says, that afterwards, to wit, on the same day and year, certain persons unknown, with force and arms, in the night-time, entered into the said ship then drove upon the said shore almost wrecked, and then and there stole and feloniously took and carried away certain goods and chattels, parcel of the other goods and chattels abovementioned, of which the said *W.* afterwards, to wit, on the twenty-eighth day of *November* aforesaid, at the parish aforesaid, having notice, and then not knowing to what person or persons the said goods and chattels then belonged, and observing that no body then and there took care to preserve the same, and the said ship being in danger of perishing, and of being broke to pieces, to preserve the said goods and chattels in the said declaration abovementioned, lest the same should be stole or lost, with great danger and labour of himself and of his servants, and at a great expence by him the said *W.* then and there on that occasion necessarily expended, procured the said goods and chattels to be removed out of the said ship into a certain house in the said island of *Sheppey*, and caused the same to be there safely and securely kept, until, &c. And the said *W.* in fact says, that for the said labour and expences he the said *W.* then and there reasonably deserved to have the sum of 150 *l.* of good and lawful money of *England*; and that
after-

afterwards, to wit, on the first day of *December* in the fourth year aforesaid, at the parish aforesaid, the said *W.* then first knowing that the said goods and chattels belonged to the said *T.* and *J.* gave notice to the said *T.* and *J.* of all the premisses, and then and there requested the said *T.* and *J.* to pay to him the said *W.* the said 150*l.* for the said labour and expence, and then and there offered to the said *T.* and *J.* upon payment thereof to deliver to the said *T.* and *J.* all the said goods and chattels in the said declaration mentioned; but the said *T.* and *J.* then and there intirely refused, and still refuse to pay to the said *W.* the said 150*l.* or any part thereof, although the said *T.* and *J.* were often afterwards required by the said *W.* to pay the same: Wherefore the said *W.* took as aforesaid, and detained the said goods and chattels until, &c. as it was lawful for him: And this he is ready to verify: Wherefore he prays judgment, and a return of the said goods and chattels, together with his damages, costs and charges to be adjudged to him, &c.

And the said *T.* and *J.* say, that the said *W.* ought not by the reason before alledged to avow the taking the said goods and chattels in the place in which, &c. to be just, because they say that the said *W.* on the twentieth day of *February* in the said fourth year of the reign of our lady queen *Anne*, in the declaration of the said *T.* and *J.* above specified, of his own proper injury, and

*Replication de
injuria sua
propria.*

Issue.
Venire a-
warded.

*Suggestion of
the death of one
of the plain-
tiffs.*

Vic' non milit
breve.

Alias venire
awarded.

without any such cause as by the said *W.* in his said avowry is alledged, in the said place in which, *Ec.* took the said goods and chartels of the said *T.* and *J.* in the declaration of the said *T.* and *J.* above specified, and unjustly detained them against gages and pledges, until, *Ec.* in manner and form as the said *T.* and *J.* in their said declaration complain against him : And this they pray may be inquired of by the country ; And the said *W.* does so likewise, *Ec.* Therefore it is commanded to the sheriff, that he cause to come before our lady the queen * from the day of *St. Michael* in three weeks wherefoever, *Ec.* twelve, *Ec.* by whom, *Ec.* and who neither, *Ec.* to take cognizance, *Ec.* because as well, *Ec.* The same day is given to the said parties, *Ec.* Before which day, to wit, on the 17th day of *July* in the 5th year of the reign of our said lady the present queen the said *T.* died, and the said *J.* survived him ; And now at this day before our said lady the queen at *Westminster* the said *J.* and *W.* come by their attornies aforesaid ; and the said sheriff did not send the said writ, nor did he do any thing thereupon : Therefore, as before, it is commanded to the sheriff of the county aforesaid, that he cause to come before our said lady the queen on the octave of *St. Hilary*, wherefoever, *Ec.* twelve, *Ec.* by whom, *Ec.* and who neither, *Ec.*
to

* No such return. See *Vol.* 1. p. 63.

to take cognizance, &c. because as well, &c.
The same day is given to the said parties,
&c.

Pleas before our lord the king at West- Nisi prius re-
minster, of the term of Holy Trinity cord.
in the twenty-ninth year of the reign
of our sovereign lord Charles the se-
cond, now king of England, &c.

City of Coventry, *J.* B. late of *Wikin* in the B. R. Decla-
to wit, *J.* county of the city of *ration in re-*
Coventry aforesaid, yeoman, was summoned *plevin.*
to answer *M.* lady *D.* widow, of a plea where- Lill. Ent. 357.
fore he took the cattle of the said *M.* and
them unjustly detained against gages and
pledges, &c. *And whereupon* the said *M.* by
H. O. her attorney, complains that the said
T. on the 23d day of *October* in the twenty-
eighth year of the reign of our sovereign lord
Charles the second now king of *England*, &c.
at the city of *Coventry* in the county of the
same city, in the king's highway there took
the cattle of the said lady *M.* to wit, five oxen
and one heifer, and them unjustly detained
against gages and pledges, until, &c. Where-
upon the said lady *M.* says that she is in-
jured, and has damage to the value of twenty
pounds: And thereupon she brings suit,
&c.

And the said *T. B.* by *G. A.* his attorney, *Plea property*
comes and defends the force and injury, when, *in a stranger.*

Traverse.

Ec. and says, * that at the time the said cattle are supposed to have been taken, the property of those cattle was in one *R. C.* widow, administratrix of all and singular the goods and chattels, rights and credits, which were of *W. C.* her late husband deceased, at the time of his death; *without this*, that the property of the said cattle, at the time of the taking of them, was in the said lady *M. D.* as she by her said writ and declaration above thereupon supposes: And this he is ready to verify: Wherefore he prays judgment of the said writ and declaration, and a return of the said cattle to be adjudged to him, *Ec.*

Replication.

And the said *M. lady D.* says, that her said writ and declaration ought not to be quashed, because she says, that the property of the said cattle, at the said time of taking them, was in her the said *M. lady D.* in manner and form as she by her writ and declaration aforesaid has there-

* Replevin. The defendant avows the taking, as the goods *ipsius defendantis*, and concludes with *petit judicium et return* *Ec.* Demurrer for that the defendant does not traverse the property of the plaintiff. *Curia*: It will be good both ways; the defendant might have pleaded property in abatement or in bar, and it would have been good without a traverse, and upon that issue should have been joined. And therefore when the defendant makes cognizance, or avows that the property is in the defendant, it seems to be sufficient; for the defendant cannot conclude to the country, but the plaintiff ought to reply, and upon that replication issue shall be joined, and the property of the plaintiff must be proved. *Trin. 2 Geo. 1. C. B. Loveday v. Mitchell, Comyns 247.*

thereupon above alledged, to wit, at the city of *Coventry* aforesaid in the county of the same city: And she prays that this may be inquired of by the country: And the said *T. B.* does so likewise: Therefore it is commanded to the sheriff, that he cause to come before our lord the king from the day of the *Holy Trinity* in three weeks, wheresoever, &c. twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid, &c.

Issue.
Venire awarded.

Pleas before our lord the king at Westminster, of the term of the Holy Trinity, in the twenty-ninth year of the reign of our sovereign lord Charles the second, now king of England, &c.

City of Coventry, **T**HE jury between *M. Jurat.*
to wit, lady *D.* widow, by her attorney, plaintiff, and *T. B.* late of *Wikin* in the county of the city of *Coventry* aforesaid, yeoman, of a plea of taking and detaining cattle, &c. are respited before our lord the king until * from the day of *St. Michael* in three weeks wheresoever, &c. unless the justices of our lord the king, assigned to take the assises in the county of the said city, shall first come on *Wednesday* the twenty-fifth day of *July* at the city of *Coventry* aforesaid in the

* No such return. See *Vol. 1. p. 63.*

the county of the same city, by form of the statute, &c. for default of the jurors, &c. Therefore let the sheriffs have the bodies, &c. The same day is given to the said parties, &c.

Le sciendum.

And be it known, that the writ of our lord the king thereupon, on the fourth day of July in this same term, before our lord the king at Westminster, is delivered to the under-sheriff of the county of the city of Coventry aforesaid, to be executed in form of law at his peril, &c.

Non prof. in
replevin.
Lill. Ent. 347.

Suffex, **B**E it remembered, That M.G. the el-
to wit, der heretofore, to wit, at the coun-
ty court of Suffex, held at Lewes for the coun-
ty aforesaid, on the fourteenth day of May in
the twelfth year of the reign of our sovereign
lady Anne, by the grace of God, of Great
Britain, &c. before S. W. and S. W. fuitors of
the same court, complained against W. A. gent.
of a plea of taking and unjustly detaining the
cattle of the said M. to wit, eight ewes and
six lambs; which said plaint, by virtue of the
writ of our lady the queen of recordari facias
loquellam, returnable* from the day of St. Mi-
chael in three weeks in that same term, where-
soever, &c. was held here at Westminster* from
the day of St. Michael in the said three weeks
at the request of the said W. At which day
at Westminster aforesaid came as well the said
M. by J. M. his attorney, as the said W. by
J. A. his attorney; And the said M. by his
said

Plaint in
county court.

Removed into
B. R. by re-
cordari.

Declaration.

* No such return. See Vol. 1. p. 66.

said attorney complains, that the said *W.* on
 the ninth day of *April* in the twelfth year of
 the reign of our sovereign lady *Anne*, now
 queen of *Great Britain*, &c. at *Chalvrington*
 in the county aforesaid, in a certain place
 there called the *Croft*, took the cattle, to wit,
 eight ewes and six lambs of the said *M.* and
 them unjustly detained against gages and
 pledges, &c. until, &c. Wherefore the said
M. says that he is injured, and hath damage
 to the value of ten pounds; And thereupon
 he brings suit, &c. And the said *W.* by his *Impar lance.*
 said attorney defends the force and injury,
 when, &c. and prays leave to imparle there-
 upon before our lady the queen until on the
 octave of *St. Hilary*, wheresoever, &c. and has,
 &c. The same day is given as well to the said
M. as to the said *W.* &c. At which day before *Impar lance*
 our lady the queen at *Westminster* came as well *continued.*
 the said *M.* as the said *W.* by their attornies
 aforesaid; And upon this the said *W.* prays
 further leave to imparle thereupon before our
 said lady the queen, until from the day of
Easter in fifteen days, wheresoever, &c. and
 has, &c. The same day is given as well to
 the said *M.* as to the said *W.* &c. At which
 day before our said lady the queen at *West-*
minster came as well the said *M.* as the said
W. by their attornies aforesaid: And upon *Defendant says*
 this the said *W.* by his said attorney says, that *that he took*
 he took the said cattle at *Ripe*, otherwise *the cattle in*
Ecklington, in the county aforesaid; without *another place.*
this, that he took the said cattle at *Chalvring-*
ton in the county aforesaid, as the said *M. G.*
 by his said declaration has above alledged;
 And

*Suggestion pro
return' ha-
bend. as bai-
liff of R. R.
makes cogni-
zance for rent
arrear.*

*R. R. seised
in fee.*

*Leases to M.
G.*

And this he is ready to verify: Wherefore he prays judgment of the said writ, and that the said writ and declaration may be quashed, &c.* And for having a return of the said cattle the said *W.* as bailiff of *R. R.* well acknowledges the taking of the said cattle at *Ripe*, otherwise *Ecklington*, in the county afore-
said, in a certain place called the *Cony Earths*; and justly, &c. because he says that the said place called the *Cony Earths* contains, and at the time in which, &c. contained five acres with the appurtenances in the said parish of *Ripe* otherwise *Ecklington*; of which said five acres of land, with the appurtenances, the said *R.* before the said time in which, &c. was seised in his demesne as of fee; and being so thereof seised before the said time in which, &c. to wit, on the eighteenth day of *March* in the eleventh year of the reign of our sovereign lady *Anne* now queen of *Great Britain*, &c. at the parish of *Selmiston* in the county afore-

* Replevin of cattle taken in *B.* Plea in abatement, took them in *C. absque hoc, quod cepit in præd. loco vocat' B. &c. et pro returno habendo* he avows, &c. The plaintiff confesses the caption to be in *C.* and thereupon the avowant had judgment that the writ should abate, and for the return of the cattle. *Curia*: The avowant shall not have costs, for the *stat. 21 H. 8. c. 19.* does not extend to this case, but gives costs only when the plaintiff is nonsuited; and the *stat. 7 H. 8. c. 4.* gives costs only when the plaintiff is barred; but here the plaintiff is neither barred nor nonsuited, the writ only abates, he may have a new writ, and is not put to his second deliverance. *Trin. 1 Annæ, B. R. Smith and Walgrave, Comyns 122.*

aforesaid, the said *R. R.* demised to one *M. G.* the younger, the said five acres with the appurtenances, by the name of all those two pieces or parcels of pasture called the *Cony Earibs*, with the appurtenances lying and being in *Ripe*, otherwise *Ecklington* aforesaid; To have and occupy the said five acres of land with the appurtenances, whereof, &c. to the said *M. G.* the younger, from the feast of the annunciation of the blessed virgin *Mary* then next ensuing, unto the end and term of one whole year, and so from year to year as long as it should please both parties: Yielding and paying therefore the yearly rent or sum of fifty shillings of lawful money of *Great Britain*, to be paid at the two most usual feasts or times of payment in the year to wit, at the feast of *St. Michael* the archangel, and the annunciation of the blessed virgin *Mary*, by even and equal portions; by *Lessee enters.* virtue of which said demise the said *M. G.* the younger, afterwards, and before the said time in which, &c. to wit, on the twenty-sixth day of *March* in the year last aforesaid, entered into the said five acres of land with the appurtenances, whereof, &c. and was possessed thereof: And the said *M. G.* the younger being so possessed thereof, and the said *R.* being seised of the reversion of the said five acres of land, with the appurtenances, in his demesne as of fee; and because fifty shillings of the *Rent arrear.* said rent for one year ended at the feast of the annunciation of the blessed virgin *Mary* in the twelfth year of the reign of our lady the queen of *Great Britain*, &c. were in arrear and unpaid

paid to the said *R.* after the feast, and at the said time in which, &c. the said *W.* as bailiff of the said *R.* well acknowledges the taking of the said cattle in the said place in which, &c. as in parcel of the said tenements, with the appurtenances, whereof, &c. demised to the said *M. G.* the younger in form aforesaid, and justly, &c. for the said fifty shillings of rent being in arrear to the said *R.* in form aforesaid, &c. And this he is ready to verify: Wherefore he prays judgment, and a return of the said cattle, together with his damages, costs and charges in this behalf expended, according to the form of the statute in such case made and provided, to be adjudged to him, &c.

Day given for the plaintiff to plead in bar.

Death of the queen.

Further day given.

And upon this the said *M.* prays leave of the court of our said lady the present queen here until*from the day of *St. Michael* in three weeks, wheresoever, &c. to plead in bar of the said cognizance, and has, &c. The same day is given as well to the said *M.* as to the said *W.* &c. Before which day our said lady the queen died, and our sovereign lord *George* the present king succeeded, and took upon himself the government of this kingdom; At which said return*from the day of *St. Michael* in three weeks before our said lord the king at *Westminster* came as well the said *M.* as the said *W.* by their attornies aforesaid; And the said *M.* prays further leave of the court of our said lord the present king here until on the

* No such return. See *Vol. 1. p. 66.*

the octave of *St. Hilary*, wheresoever, *Ec.* to plead in bar of the said cognizance, and has, *Ec.* The same day is given as well to the said *M.* as to the said *W.* *Ec.* At which said return on the octave of *St. Hilary* before our said lord the king at *Westminster* came as well the said *M.* as the said *W.* by their attornies aforesaid : And the said *M.* prays further *Further day* leave of the court of our said lord the present *given.* king here until from the day of *Easter* in fifteen days, wheresoever, *Ec.* to plead in bar of the said cognizance, and has, *Ec.* The same day is given as well to the said *M.* as to the said *W.* *Ec.* At which said return from the day of *Easter* in fifteen days before our said lord the king at *Westminster* came as well the said *M.* as the said *W.* by their attornies aforesaid ; And the said *M.* prays further *Further day* ther leave of the court of our said lord the *given.* present king here until on the morrow of the *Holy Trinity*, wheresoever, *Ec.* to plead in bar of the said cognizance, and has, *Ec.* The same day is given as well to the said *M.* as the said *W.* *Ec.* Upon which the said *M.* *Plaintiff* being solemnly demanded, came not, nor did *makes default.* he further prosecute his said writ ; Therefore *Judgment.* it is considered, that the said *M.* take nothing by his said writ, but be in mercy for his false complaint thereupon, and that the said *W.* *Defendant* go thereupon without day, *Ec.* And there *prays a writ of inquiry.* upon the *W.* according to the form of the statute in such case lately made and provided, prays the writ of our said lord the present king to be directed to the sheriff of the county aforesaid, to inquire of the arrears of the

*Inquiry a-
warded.*

*Return of
inquiry.*

*Judgment
thereon.*

the said rent, and of the value of the goods and chattels above specified ; and it is granted to him, &c. *Therefore* it is commanded to the sheriff of the county aforesaid, that according to the form of the said statute, by the oath of twelve good and lawful men of his county, he diligently inquire how much of the said yearly rent was in arrear and unpaid, at the said time of the taking and distraining the said goods and chattels, and how much the said goods and chattels so as aforesaid taken and distrained were worth, according to the value of them ; and that the sheriff should make appear here the inquisition which, &c. * from the day of St. Michael in three weeks wheresoever, &c. under his seal, and the seals, &c. *At which day* here came the said W. by his attorney aforesaid, and the sheriff, to wit, Sir J. S. bart. now returns here a certain inquisition taken before him at *Eastgrinstead* in the county aforesaid on the fifth day of *August* last past, by the oath of twelve good and lawful men, by which it is found, that at the time of taking the said goods and chattels, fifty shillings of the said yearly rent in the said avowry mentioned were due to the said W. in arrear, and were unpaid ; and that the said goods and chattels, so as aforesaid taken and distrained, according to the true value thereof were worth fifty shillings. *Therefore* it is considered, that the said W. recover against the said M. the said fifty shillings of the rent aforesaid.

* No such return. See Vol. i. p. 66.

aforesaid, being found by the said inquisition in form aforesaid, and his damages by occasion of the premisses to nine pounds, by the court of our lord the present king here adjudged to the said *W.* at his request, for his costs and charges by him in this behalf sustained, according to the form of the statute thereupon lately made and provided: Which said value, costs and charges in the whole amount to fourteen pounds, *£c.*

And the said *W.* by *H. S.* his attorney comes and defends the force and injury, when, *£c.* and as bailiff of *M. G.* well acknowledges the taking the said cattle in the said place in which, *£c.* and justly, *£c.* because he says that the same place, in which the taking the said cattle is supposed to be done, contains, and at the same time, in which the taking the said cattle is supposed to be done, contained in itself forty acres of land with the appurtenances in *L.* aforesaid; and that long before the said time in which, *£c.* the said *F.* was seised of the said forty acres of land with the appurtenances, whereof the said place in which *£c.* is parcel, in his demesne as of fee, and held the said forty acres of land with the appurtenances of the said *M.* as of his manor of *B.* in the county of *S.* aforesaid, by fealty, suit of court, rent of twelve shillings and sixpence every year, to be paid yearly at the feast of *St. Michael*; of which services the said *M.* was seised by the hands of the said *F.* as by the hands of his true tenant, to wit, of the fealty, suit of court, and of the said rent, in

*Consuance as
bailiff.
Lill. Ent. 360.*

*For rent
service.*

his demesne as of fee; And because five pounds twelve shillings and six-pence of the aforesaid rent for nine years, ended at the feast of St. Michael in the twenty-sixth year of the reign of our said lord the present king, were in arrear and unpaid to the said *M.* at the said time in which, &c. the said *W.* as bailiff of the said *M.* well acknowledges the taking the said cattle in the said place in which, &c. and justly, &c. for the said five pounds twelve shillings and sixpence, so being in arrear in form aforesaid, as in parcel of the said land held of the said *M.* in form aforesaid, and within the fee, &c. And this he is ready to verify; Wherefore he prays judgment, and a return of the said cattle to be adjudged to him, &c.

*Bar, not seised
of the rent.*

And the said *F.* says that the said *M.* was not seised of the said services by the hands of the said *F.* as by the hands of his true tenant, as the said *W.* has above alledged; And this he is ready to verify; Wherefore for this that the said *W.* above acknowledges the taking the said cattle in the said place in which, &c. the said *F.* prays judgment and his damages, by occasion of the taking and unjustly detaining the said cattle, to be adjudged to him, &c.

Replication.

And the said *W.* as before says, that the said *M.* was seised of the said services by the hands of the said *F.* as by the hands of his true tenant, as he the said *W.* has above alledged; and of this he puts himself upon the country; And the said *F.* does so likewise:

Issue.

R

It is therefore commanded to the sheriff, that Venire & he cause to come here, from the day of the awarded. Holy Trinity in three weeks, twelve, &c. by whom, &c. and who neither, &c. to take cognizance, &c. because as well, &c.

Scire facias.

GEORGE the second, &c. To the sheriffs of London greeting: *Whereas A. H.* Sci. fac. quare executionem
widow, who was the wife of Sir R. H. non after error
knt. deceased, lately in our court before Sir R. brought in
E. knt. and his brethren, then our justices of dower. B. R.
the common bench at *Westminster*, by our writ of dower, whereof she hath nothing, &c. and by the judgment of the same court recovered against M. P. esq; as well her seisin of a third part of 24 mesuages, with the appurtenances, in the parish of *St. Dunstan in the west, London*, as also 754 l. s. 7 d. as well for the value of the third part of the tenements aforesaid, with the appurtenances, from the time of the death of the said Sir R. her late husband, &c. and whereof the said Sir R. died seised, as for her damages, costs and charges, which she sustained by reason of the detaining the said dower, whereof the said M. is convicted, as by the inspection of the record and process thereof,
H h 2

thereof, which by virtue of our writ for correcting errors prosecuted by the said *M.* of and upon the premisses, we lately caused to be brought into our court before us, it appeareth to us of record; and now on the behalf of the said *A.* we have received information in our court before us, that although judgment be thereof given, yet execution of the said judgment doth still remain to be done unto her; whereupon the said *A.* hath besought us, that a proper remedy may be provided for her in this behalf: *We therefore* being willing that what is just should be done in this behalf, do command you that by honest and lawful men of your bailiwick ye warn the said *M.* that he appear before us on the octave of the purification of the blessed virgin *Mary*, wheresoever we shall then be in *England*, to shew if he hath or knoweth of any thing to say for himself, wherefore the said *A.* should not have her execution against him, as well for the seisin of the said third part of the tenements aforesaid, with the appurtenances, as the value, damages, costs and charges aforesaid, according to the force, form and effect of the recovery aforesaid, if it shall seem expedient to him, and further to do and receive what our said court before us shall then consider of him in this behalf: And have ye there then the names of those by whom ye shall have warned him, and this writ. Witness *Philip* lord *Hardwicke* at *Westminster* the 23d day of *January* in the 9th year of our reign.

GEORGE the third, &c. To the sheriff of *Surrey* greeting: Whereas *J. T.* lately in the court of our palace of *Westminster*, before the judges of that court without our writ, by the judgment of the same court, recovered against *T. W.* 6*l.* 19*s.* 10*d.* for his damages which he sustained, as well by occasion of the not performing certain promises and undertakings made by the said *T.* to the said *S.* at *Souibwark* in your county, and within the jurisdiction of the same court, as for his costs and charges expended by him about his suit in that behalf, whereof the said *T.* is convicted, as by the inspection of the record and process thereof in our court before us at *Westminster* now remaining, and which for certain causes we lately caused to be brought into our same court before us, appeareth to us of record; and now on the behalf of the said *J.* in our court before us we have been informed that although judgment be thereof given, yet execution of the said damages still remaineth to be made to the said *J.* Whereupon the said *J.* hath besought us that a proper remedy may be provided for him in this behalf; And we being willing that what is just should be done in this behalf, do command you, that by good and lawful men of your bailiwick you make known to the said *T.* that he be before us on the octave of *St. Hilary*, wheresoever we shall then be in *England*, to shew if any thing he hath or knoweth to say for himself why the said *J.* ought not to have his execu-

Sci. fac. quare execut. non after error on a judgment in the palace court. B. R.

tion against him of the damages aforesaid, according to the force, form and effect of the said recovery, if it shall seem expedient to him, and further to do and receive what our same court before us shall consider of him in this behalf: And have you there the names of those by whom you shall make known to him, and this writ. Witness, &c.

Mich. 6 Geo. 2.

Entry of Sci. fa. Inq. against executors. B. R.

Recital of Fi. fa. against the executors on a judgment in case recovered against the testator.

After Sci. fa. against the executors.

THE lord the king sent to the sheriffs of *London* his writ close, in these words, to wit, *George II. &c.* To the sheriffs of *London* greeting. *Whereas* by our writ we lately commanded you, that of the goods and chattels which were of *T. H.* deceased, at the time of his death, being in the hands and custody of *A. H.* and *B. B.* executors of the testament and last will of the said *T. H.* to be administered in your bailiwick, you should cause to be made *5 l. 10 s.* which *T. M.* lately in our court before us at *Westminster*, by bill without our writ and by the judgment of the same court recovered against the said *T. H.* in his life-time, for his damages which he sustained as well by occasion of the not performing certain promises and undertakings made to the said *T. M.* by the said *T. H.* in his life-time, as for his costs and charges expended by him about his suit in that behalf; whereof the said *T. H.* was convicted, as appeareth to us of record. And whereupon lately in our same court before us,

Scire facias.

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us, it was considered, that the said *T. M.* should have his execution against the said *A.* and *B.* of the damages aforesaid, of the goods and chattels which were of the said *T. H.* at the time of his death, being in the hands of the said *A.* and *B.* to be administered, as also appeareth to us of record; and that you should have that money before us at *Westminster* on *Monday* next after three weeks of *St. Michael* to render to the said *T. M.* for his damages aforesaid. And by that writ we also commanded you, that of the goods and chattels which were of the said *T. H.* being in the hands of the said *A.* and *B.* in your bailiwick to be administered, you should cause to be made 16*l.* which were adjudged to the said *T. M.* in our said court before us at *Westminster*, according to the form of the statute in such case thereupon lately made and provided, for his costs and charges expended by him about his suit, in the prosecution of our writ of *Scire facias* of and upon the said judgment against the said *A.* and *B.* in our court before us at *Westminster* aforesaid lately prosecuted, whereof the said *A.* and *B.* were convicted, as also appeareth to us of record, of the goods and chattels which were of the said *T. A.* at the time of his death, being in the hands of the said *A.* and *B.* to be administered if they had so much in their hands to be administered; and if they had not so much in their hands to be administered, then the said 16*l.* to be levied of the proper goods and chattels of the said *A.* and *B.* And that you should

And for costs on the Sci. fa. de bonis testatoris.

*Si tantum, &c.
Si non, &c.
de bonis propriis.*

Return.

have that money before us at *Westminster* at the day aforesaid, to render to the said *T. M.* for those costs and charges. And you at that day returned to us that the said *A. H.* and *B. H.* had not any goods or chattels, and that neither of them had any goods or chattels in your bailiwick which were of the said *T. H.* deceased, at the time of his death in their hands to be administered, whereof you could cause to be made the damages, costs and charges aforesaid, or any part thereof. And that the said *A.* and *B.* or either of them, had not any goods or chattels in your bailiwick whereof you could cause to be made the said 16*l.* for costs and charges aforesaid or any part thereof. And because the said return by you so made as aforesaid in our court before us at *Westminster* aforesaid, seemeth to be in delay of the execution of the said damages, costs and charges so as aforesaid recovered and adjudged; And also for that that in our same court before us at *Westminster* aforesaid, on the behalf of the said *T. M.* it is sufficiently testified, that diverse goods and chattels which were of the said *T. H.* at the time of his death, to the value of the said damages, costs and charges, came to the hands and possession of the said *A.* and *B.* after the death of the said *T. H.* to be administered, and that the said *A.* and *B.* have sold, wasted and elained the said goods and chattels, and have converted and disposed of the money coming therefrom to their own proper use, to the intent that the said execution thereof should not yet be made;

*And**Devastavit
suggested.*

And we being unwilling that those things which in our same court before us have been rightly acted and adjudged, should be avoided by art or deceit, command you that of the goods and chattels which were of the said *T. H.* at the time of his death, being in the hands of the said *A.* and *B.* to be administered in your bailiwick, you cause to be made the damages, costs and charges aforesaid, if thereof you can levy the same; and have the money thereof levied before us at *Westminster*, on *Tuesday* next after the morrow of *All Souls*, to render the said *T. M.* for the damages, costs and charges aforesaid.

And if you cannot levy the same, then if it can appear to you by inquisition, in this behalf, to be taken upon the oath of good and lawful men of your bailiwick, or by any means whereby you may be better informed that the said *A.* and *B.* have sold, wasted, elained or converted to their own proper use goods and chattels which were of the said *T. H.* at the time of his death, being in the hands of the said *A.* and *B.* to be administered, to the value of the damages, costs and charges aforesaid, or of any part of them;

Then by good and lawful men of your bailiwick make known to the said *A.* and *B.* that they be before us at *Westminster* on the said *Tuesday* next after the morrow of *All Souls*, to shew if any thing they have or know to say for themselves, why the said *T. M.* ought not to have his execution against them of the damages costs and charges aforesaid, to be levied of the proper goods and chattels of the

Fi. fac. de bonis testatoris.

If the sheriff cannot levy, then if it shall appear by inquisition that the executors have wasted, &c.

Sci. fac. quare execution non, &c. de bonis propriis.

the said *A.* and *B.* if it shall seem expedient to him, and further to do and receive what our court before us shall then and there consider of them in this behalf; and have then as well the names of those by whose oath you shall take that inquisition in this behalf, as the names of them by whom you shall make known to the said *A.* and *B.* and this writ. Witness *Robert* lord *Raymond* at *Westminster*, the 23d day of *October* in the 6th year of our reign.

Return.

At which day before the lord the king at *Westminster* came the said *T. M.* in his proper person, and the sheriffs of *London*, namely *Sir H. H. knt.* and *R. A. esq;* at that day returned the said writ in form aforesaid directed to them, in manner and form following, that is to say, *That* the said *A.* and *B.* had not, nor had either of them any goods or chattels which were of the said *T. H.* deceased, at the time of his death in their hands to be administered, in their bailiwick, whereof the damages, costs and charges aforesaid, or any part thereof, might be caused to be made; *And* that the said *A.* and *B.* had not, nor had either of them any thing in their bailiwick by which they could make known to them or either of them; and that they were not found, nor was either of them found in the same. *But* that the said *A. H.* and *B. H.* had diverse goods and chattels which were of the said *T. H.* deceased, at the time of his death in their hands and custody, which after the death of the said *T. H.* came to the hands and possession of the said *A.*

Nulla bona.

*Nihil quoad
sci. fac.*

*Devastavit
per inquisit.*

A. and *B.* to be administered, to the value of the damages, costs and charges aforesaid, which said goods and chattels they the said *A.* and *B.* have eloined, wasted and converted to their own proper use, as appeareth to the said sheriffs by a certain inquisition taken in that behalf, on the oath of good and lawful men of their bailiwick, and annexed to the said writ.

And the said *A. H.* and *B. H.* at the same *Plea*; Plene day being solemnly called, come in their Administration. proper persons and defend the force and injury, when, &c. and they say that the said *T. M.* ought not to have his execution against them of the damages aforesaid, of their proper goods and chattels, because they say that they the said *A.* and *B.* on the day of the suing forth the said writ of *Scire facias*, had fully administered all the goods and chattels which were of the said *T. H.* at the time of his death, which had come to the hands of the said *A.* and *B.* to be administered, to wit, at *London* aforesaid, in the parish of *St. Mary le Bow*, in the ward of *Cheap*; and that they have not, nor had on the day of suing forth the said writ of *Scire facias*, any goods or chattels which were of the said *T. H.* at the time of his death, in their hands to be administered; *Without Devastavit this*, that the said *A.* and *B.* have wasted, traversed, sold, eloined or converted, or disposed to their own proper use any goods or chattels which were of the said *T. H.* at the time of his death, in manner and form as above is supposed by the said return of the said writ of

of *Seire facias* and the inquisition aforesaid thereupon taken; and this they are ready to verify. Wherefore they pray judgment if the said *T. M.* ought to have execution against them of the said damages, costs and charges of the proper goods and chattels of the said *A.* and *B.* &c.

*Replication,
issue on the
traverse.*

And the said *T. M.* saith, that he by any thing by the said *A.* and *B.* above in pleading alledged ought not to be precluded or retarded from having his execution against the said *A.* and *B.* of the damages, costs and charges aforesaid, of the proper goods and chattels of the said *A.* and *B.* because he saith, that the said *A.* and *B.* have cloined, wasted and converted to their own proper use diverse goods and chattels which were of the said *T. H.* at the time of his death, and which after the death of the said *T. H.* came to the hands and possession of the said *A.* and *B.* to be administered, to wit, to the value of the damages, costs and charges aforesaid, in manner and form as above is found by the said inquisition, to wit, at *London* aforesaid, in the parish and ward aforesaid; and this he prayeth may be inquired of by the country: And the said *A.* and *B.* do so likewise: Therefore it is commanded to the sheriffs that they cause to come before the lord the king at *Westminster*, on next after twelve, &c. by whom, &c. And who neither, &c. To recognize, &c. Because as well, &c. The same day is given to the parties aforesaid, at the same place, &c.

Venire facias.

Mich.

Mich. 6 Geo. 2. Verdict for the plaintiff.

Error in parliament, and bail put in the judgment, being *de bonis propriis*.

Easter 5 Geo. 2.

London, to wit, The lord the king sent Sci. fa. against his writ close to the sheriffs of L. directed in these words, to wit, George the second, &c. To the sheriffs of L. greeting. *Whereas T. M. lately in our court before us at W. by bill and without our writ, and by the judgment of the same court recovered against T. H. 5111 10s. for his damage which he sustained as well by occasion of the not performing certain promises and undertakings lately made by the said T. H. to the said T. M. as for his costs and charges expended by him about his suit in that behalf, whereof the said T. H. is convicted, as appeareth to us of record. And afterwards the said T. H. at L. afore said, to wit, in the parish of St. Mary le Bow in the ward of Cheap, made his testament and last will in writing, and by the same testament constituted A. H. and B. H. executors thereof, and afterwards died there; after whose death the said A. H. and B. H. took upon themselves the burthen of the execution of the said testament. And now on the behalf of the said T. M. in our court before us we have been informed, that although judgment be thereof given,*

Sci. fa. against executors on a judgment against testator. B. R. Recital of judgment. Testator made his will and defendants executors thereof. Dies and defendants take the executorship upon them.

yet

yet execution of the damages aforesaid still remaineth to be made to him; whereupon the said *T. M.* prayeth that a proper remedy may be provided for him in this behalf.

Scire facias.

And we being willing that what is just should be done in this behalf, command you that by good and lawful men of your bailiwick you make known to the said *A. H.* and *B. H.* that they be before us at *W.* on *Wednesday* next after 15 days of *Easter*, to shew if they have or know any thing to say for themselves, why the said *T. M.* ought not to have his execution against the said *A. H.* and *B. H.* of the damages aforesaid, of the goods and chattels which were of the said *T. H.* at the time of his death, being in the hands of the said *A. H.* and *B. H.* to be administered, according to the force, form and effect of the said recovery, if it shall seem expedient to them; and further to do and receive all and singular those things which our said court before us shall then and there consider of them in this behalf; and have there then the names of them by whom you shall make known to them, and this writ. Witness *Robert* lord *Raymond* at *W.* the 12th day of *February* in the 5th year of our reign.

Return Nihil.

At which day before the said lord the king at *W.* came the said *T. M.* in his proper person, and the sheriffs of *L.* namely, *S. R.* and *T. P.* esqrs. at that day return, that the said *A. H.* and *B. H.* have nothing, nor hath either of them any thing in their bailiwick, whereby they can make known to them or

to either of them, nor are they found, nor is either of them found in the same. And the said *A. H.* and *B. H.* come not. *Therefore*, as before, it is commanded to the sheriffs of *L.* that by good, &c. they make known to the said *A. H.* and *B. H.* that they be before the said lord the king at *W.* on *Thursday* next after three weeks of *Easter*, to shew in form aforesaid, if, &c. And further, &c. The same day is given to the said *T. M.* at the same place, &c.

Alias awarded.

At which day before the said lord the king at *W.* came the said *T. M.* in his proper person; and the said sheriffs of *L.* aforesaid, as before, return, that the said *A. H.* and *B. H.* have nothing, nor hath either of them, any thing in their bailiwick, whereby they can make known to them or to either of them, nor are they found, nor is either of them found in the same. And the said *A. H.* and *B. H.* at the same day being solemnly called, also come, by *N. T.* their attorney, and say, That the said *T. M.* ought not to have execution against the said *A. H.* and *B. H.* of the damages aforesaid, of the goods and chattels which were of the said *T. H.* at the time of his death, being in the hands of the said *A.* and *B.* (as is above supposed by the said writ) to be administered, because they say, that after the giving the said judgment, and before the issuing out of the said first writ of *Scire facias*, and in the life-time of the said *T. H.* to wit, on the 18th day of *June* in the 5th year of the reign of the said lord the present king, the said *T. M.* for obtaining

Return Nihil.

Defendants appear.

Plea, a Ca.

Sa. against

testator, who

being taken in

execution paid

the damages

recovered.

obtaining his said damages, prosecuted out of the court here of and upon the said judgment a certain writ of the said lord the king of *Capias ad satisfaciendum* against the said *T. H.* directed to the then sheriffs of *L.* aforesaid, by which said writ it was commanded to the said then sheriffs, that they should take the said *T. H.* if he should be found in their bailiwick, and safely keep him, so that they might have his body before the said lord the king at *W.* on *Wednesday* next after three weeks of the *Holy Trinity*, to satisfy the said *T. M.* of the damages aforesaid, whereof he was convicted; and that they should have then here the said writ; which said writ of *Capias ad satisfaciendum* the said *T. M.* afterwards, and in the life-time of the said *T. H.* to wit, on the 20th day of *June* in the 5th year aforesaid, at *L.* aforesaid, to wit, in the parish of *St. Mary le Bow* in the ward of *Cheap*, delivered to *J. F.* esq; and Sir *J. S.* knight, then being sheriffs of *L.* aforesaid, to be executed in due form of law; by virtue of which said writ of *Capias ad satisfaciendum* the said *J. F.* esq; and Sir *J. S.* knight, then as aforesaid being sheriffs of *L.* aforesaid, afterwards and before the return of the said writ, and in the life-time of the said *T. H.* to wit, on the 1st day of *July* in the 5th year aforesaid, at *L.* aforesaid, in the parish and ward aforesaid, took and arrested the said *T. H.* and then and there had and detained the said *T.* in their custody in execution for the damages aforesaid, until the said *T. H.* afterwards in his life-time, to wit,

wit, on the 2d day of July in the 5th year
aforesaid, at L. aforesaid, in the parish and
ward aforesaid paid and satisfied the said da-
mages to the said T. M. And this the said
A. and B. are ready to verify: Wherefore
they pray judgment if the said T. M. ought
to have execution against the said A. and B.
of the damages aforesaid, of the goods and
chattels which were of the said T. H. at the
time of his death, being in the hands of the
said A. and B. (as above is supposed by the
said writ) to be administered, &c.

And the said T. M. saith that he by any *Replication*,
thing before alledged ought not to be pre- *that the testa-*
cluded from having his execution of the da- *tor was not*
mages aforesaid, in form aforesaid, because *taken in exe-*
in protesting that he the said T. M. did not pro- *cution, &c.*
secute any such writ of *Capias ad satisfaciendum*,
as the the said A. and B. above in pleading
have alledged, *and also in protesting* that the
said T. H. in his life-time did not pay or
satisfy the damages aforesaid, or any part
thereof, to the said T. M. *For plea* the said
T. M. saith, that the said T. H. in his life-
time was not taken in execution for the da-
mages aforesaid in manner and form as the
said A. and B. above in pleading have alledg-
ed; and he prayeth that this may be inquir-
ed of by the country; And the said A. and
B. do so likewise, &c. *Therefore* let a jury *Issue.*
come thereupon before the lord the king at *Venire facias.*
Westminster on — next after —; and
who neither, &c. to recognize, &c. because
as well, &c. the same day is given to the
parties aforesaid at the same place, &c.

Sci. fac. quare
execut. non,
&c. on a judg-
ment in an in-
ferior court re-
moved by writ
of error. B. R.

GEORGE, &c. To the sheriff of *Devon-*
shire, greeting: *Whereas W. B.* in our court
before the mayor of the borough of *Totness*
in your county, by the judgment of the
same court recovered against *W. G.* 5 l. 3 s.
4 d. which in our said court were adjudged
to the said *W. B.* for his damages which he
sustained, as well by occasion of the not per-
forming certain promises and undertakings
made by the said *W. B.* to the said *W. G.*
and not performed, as for his costs and
charges expended by him about his suit in
that behalf, whereof the said *W. G.* is con-
victed, as by the inspection of the record
and process thereupon, which for the cause
of error intervening we lately caused to come
in our court before us, and in our said court
before us is now remaining, more fully ap-
peareth: And now on the behalf of the said
W. B. we have been lately informed in our
court before us, that although judgment be
thereupon given, yet execution of the said
judgment still remaineth to be made to him;
whereupon the said *W. B.* hath prayed us,
that a proper remedy may be provided for
him in this behalf: And we being willing
that what is just should be done in this be-
half, Command you, that by good and lawful
men of your bailiwick, you make known to
the said *W. G.* that he be before us in 15
days of *St. Martin*, wheresoever we shall
then be in *England*, to shew if any thing he
hath or knoweth to say for himself, why
the said *W. B.* ought not to have execution
of

of the damages aforesaid, according to the force, form and effect of the said recovery, if it shall seem expedient to him, and further to do and receive what our said court before us shall then consider of him in this behalf; and that you have there then the names of them by whom you shall make known to him, and this writ. Witness, &c.

Trespas.

Trinity term in the tenth and eleventh years of the reign of king George the second.

Middlesex, **BE** it remembered, That on Fri- *Memorandum*
to wit, **B** day next after the morrow of *of same term.*
the Holy Trinity in this same
term before our sovereign lord the king at
Westminster came H. G. R. by R. R. his attor-
ney, and brings here in the court of our said
lord the king at *Westminster* his certain bill
against B. P. J. B. and C. P. in the custody
of the marshal, &c. in a plea of trespass upon
the case, and there are pledges for the prose-
cution, to wit, *John Doe*, and *Richard Roe*;
which said bill follows in these words: That *Declaration*
is to say, *Middlesex*, to wit, H. G. R. com- *for breaking*
I i 2 plains

*and entering
plaintiff's
house.*

*For breaking
and entering
plaintiff's
house and di-
sturbing him
in the possession
thereof.*

*For breaking
and entering
plaintiff's
house, and
carrying away
his goods.*

plains of *B. P. J. B.* and *C. P.* being in the custody of the marshal of the *Marshalsea* of the said lord the king, before the king himself, of that, that is to say, that they the said *B. P. J. B.* and *C. P.* on the twenty-first day of *May* in the tenth year of the reign of our sovereign lord *George* the second, now king of *Great Britain, &c.* with force and arms, *&c.* the house of the said *H. G. R.* in the parish of *St. Leonard Shoreditch* in the county of *Middlesex*, they broke and entered; *And also* for that they the said *B. P. J. B.* and *C. P.* afterwards, that is to say, on the same twenty-first day of *May* in the tenth year aforesaid, with force and arms, *&c.* broke and entered another house of the said *H. G. R.* in the parish aforesaid in the county aforesaid, and him the said *H. G. R.* in the quiet use and occupation of the said house last mentioned then and there disturbed and hindered; *And also* for that they the said *B. P. J. B.* and *C. P.* afterwards, that is to say, on the same twenty-first day of *May* in the tenth year aforesaid, with force and arms another house of the said *H. G. R.* in the parish of *St. Leonard Shoreditch* aforesaid in the county aforesaid broke and entered and the goods and chattels of him the said *H. G. R.* in the said house then being (that is to say) a three pint silver tankard, a silver pint mug, *&c.* [setting forth the particulars] of the value of one hundred pounds of lawful money of *Great Britain*, then and there took and carried away, and other enormities to him then and there committed, contrary to the peace of our said lord the now king, and

to the damage of the said *H. G. R.* of two hundred and forty pounds: And therefore he bringeth suit.

And the said *B. J.* and *C.* by *J. M.* their attorney come and defend the force and injury, when, &c. And as to the force and arms, and breaking the houses of the said *H. G.* and disturbing and hindering him in the quiet use and occupation of the said houses in the said declaration alledged, and taking and carrying away from thence all or any part of the several goods and chattels in the said declaration mentioned, except as herein after is specified, and whatsoever is against the peace of the said now lord the king, and also as to all the said trespasses supposed to be committed in the houses aforesaid, besides entering into the house of the said *H. G.* in the third declaration mentioned, and taking and carrying away the several goods and chattels, being part of the said goods and chattels in the said declaration mentioned, and herein after specified, they say that they or either of them are not guilty, as the said *H. G.* above complains against them: And of this they put themselves upon the country; And the said *H. G.* doth likewise the same. And as to the entering of the said house in the said third declaration mentioned, and taking and carrying away the several goods and chattels, being part of the said goods and chattels in the said declaration specified and herein after mentioned, that is to say, two stoves, &c. they say that the said *H. G.* ought not to have or maintain

Not guilty as to part justify under plaintiff's wife as to residue.

Issue.

Trespas.

tain his said action against them for the same, because they say, that before the several times in which the said several trespasses were supposed to be committed, that is to say, on the said twenty-first day of *May* in the tenth year aforesaid, at the parish aforesaid in the county aforesaid, the said *H. G.* gave licence to *E.* his wife to take and carry away the said goods and chattels herein before mentioned, being part of the said goods and chattels in the said declaration specified, from the said house, and borrow money thereon for the use of the said *H.G.* by pledging of the same; and they say, that by virtue of such licence she the said *E.* on the day and year aforesaid, at the parish aforesaid in the county aforesaid, before the times the said trespasses were supposed to be committed, hired the said *B. J.* and *C.* to enter the said house, and take and carry away the said several goods and chattels herein before mentioned, being part as aforesaid, with intent and purpose by pledging of the same to borrow money for the use of the said *H.G.* and that they afterwards, that is to say, on the day and year aforesaid, at the parish aforesaid in the county aforesaid, did by virtue of such licence enter the said house of the said *H. G.* and take and carry away the said several goods and chattels herein before mentioned, being part as aforesaid, in order to pledge the same for the intent and purpose aforesaid, as it was lawful of them to do; and thereupon the said *E.* afterwards, that is to say, on the day and year aforesaid, at the parish aforesaid in the county aforesaid, did pledge the same,
and

and then and there had and received to and for the use of the said *H. G.* her husband the money for which the said several goods and chattels herein before mentioned, being part as aforesaid, were so pledged; which are the same entring of the said house, and taking and carrying away the said several goods and chattels being part of the said goods and chattels in the said declaration specified and herein before mentioned, and for which the said *H. G.* by his said declaration complains; And this they are ready to verify; and therefore pray judgment whether the said *H. G.* ought to have or maintain his said action against them for the same.

Thomas Burdus.

And the said *H. G. R.* as to the aforesaid *Replication* plea of the said *B. P. J. P.* and *C. B.* as to *de injuria sua* the entring into the said house of the said *H. G.* in the said third declaration mentioned, and taking and carrying away the several goods and chattels being part of the said goods and chattels in the said declaration specified, and in the said plea particularly mentioned by them above pleaded in bar, saith, That he by any thing in the said plea above alledged ought not to be barred from having and maintaining his said action therefore against them, because he saith, that the said *B. J.* and *C.* at the time mentioned in the said declaration, at the parish aforesaid with force and arms, of their own wrong, without such

Trespas.

cause as is by them above alledged in their said plea, entered into the said house of the said *H. G.* in the said third declaration mentioned, and took and carried away the several goods and chattels, being part of the said goods and chattels in the said declaration specified, and in the said plea particularly mentioned, in manner and form as the said *H. G. R.* hath above thereof declared against them: And this he prays may be inquired of by the country, &c.

Thomas Denison.

Issue.
Venire
awarded to try
both issues.

And the said B. J. and C. do so likewise: Therefore as well to try this issue as the said other issue joined between the parties, let the jurors come before our lord the king at Westminster, on next after who are in no wise related either to the said H. G. or to the said B. J. and C. to make a certain jury of the country between the said parties of the plea aforesaid, to recognize upon their oaths the full truth of and concerning the premisses, because as well the said B. J. and C. as the said H. G. between whom the matter in variance is, have put themselves upon that jury. The same day is given to the parties aforesaid at the same place.

Tuesday

Tuesday next after three weeks from
Easter day in Easter term in the four-
teenth year of king George the second.
Roll

Lee.

London, *J.* G. B. complains of *M. M.* in the B. R. Decla-
to wit, *J.* custody of the marshal, &c. For *ration for a*
that he the said *M.* on the twentieth day of *criminal con-*
February in the fourteenth year of the reign *versation with*
of our sovereign lord George the second now *the plaintiff's*
king of Great Britain, &c. and on divers *wife.*
other days and times between the said twen-
tieth day of *February* and the twentieth day
of *April* then next following, with force and
arms, &c. on *C.* the wife of the said *J. G.*
at London aforesaid, to wit, in the parish of
St. Mary of the arches in the ward of Cheap,
made an assault, and her the said *C.* there
ravished, debauched, lay with, and carnally
knew, whereby he the said *J. G.* was depri-
ved of and lost, during all the time aforesaid,
the help, solace, affection, comfort and coun-
sel of his said wife, and other enormities to
the said *J. G.* did, against the peace of our
said lord the king, to the damage of the said
J. G. of ten thousand pounds: And there-
upon he brings his suit, &c.

S.

S. for the plaintiff.

G. for the defendant.

Pledges of prosecuting { *John Doe,*
and
Richard Roe.

*Mich. 11 Geo. 2.**Ventris.*

Memorandum of a bill of the same term. *Middlesex, BE it remembered, That* on Mon-*
to wit, *day next after three weeks from*

Declaration for ravishing, debauching, lying with, and carnally knowing the plaintiff's wife.

the day of St. Michael in this present term came before our sovereign lord the king at Westminster Sir W. M. bart. by J. T. his attorney, and brought here into the court of our said sovereign lord the king then there his bill against A. F. esq; commonly called the lord A. F. in the custody of the marshal, &c. of a plea of trespass; and there are pledges to prosecute, to wit, John Doe and Richard Roe; which said bill follows in these words, to wit, Middlesex, to wit, Sir W. M. bart. complains of A. F. esq; commonly called the lord A. F. in the custody of the marshal, &c. For that he the said A. on the thirtieth day of March in the tenth year of the reign of our sovereign lord George the second, now king of Great Britain, &c. and at divers other days and

* No such return. See *Vol. 1. p. 63.*

and times between the said thirtieth day of *March* and the nineteenth day of *June* then next following, with force and arms, &c. at the parish of *Staines* in the county aforesaid, did ravish, debauch, lie with, and carnally know *L.* the wife of the said Sir *W.* whereby the said Sir *W.* was deprived of and lost the comfort and society of his said wife for all the time aforesaid, and did other enormities to the said Sir *W.* against the peace of our lord the king, to the damage of the said Sir *W.* of twenty thousand pounds: And therefore he brings his suit, &c.

And the said *A.* by *H. C.* his attorney comes *Plea, Not* and defends the force and injury, when, &c. *guilty.* and saith, that he is in no wise guilty of the trespass above charged on him as the said Sir *W.* above complains against him: And of this he puts himself upon the country; *And Issue.* the said Sir *W.* does likewise the same Therefore let there come a jury thereof before *Award of the* our lord the king at *Westminster*, on *Venire.* next after and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the said parties there, &c.

Mich. 26 Car. 2.

Somerset, *G. B.* esq; complains of *R. D. W. D.* *B. R. Declaration in trespass entering plaintiff's closes, eating and consuming* *to wit,* *G.* and *H. D.* being in the custody of the marshal, &c. For that, that on the twenty-first day of *January* in the year of our Lord 1672. with force and arms, &c. they broke

*his grafs and
corn with cat-
tle, cutting
down two
oaks, and
carrying away
the timber.*

broke and entered the closes of the said G. called the *Easter twelve acres*, the *Wester twelve acres*, and *Owels*, at the parish of *Cannington* in the county aforesaid, and with their feet in walking trod down and consumed the grafs of the said G. to the value of one hundred shillings, lately growing in the said closes, and with certain cattle, to wit, horses oxen, cows, hogs and sheep, eat up, trod down, and consumed other grafs, and the corn of the said G. to wit, wheat, barley, pease, beans and oats, to the value of forty pounds, also lately growing in the said closes, and also then and there cut down and felled the trees, to wit, two oaks of the said G. lately growing in the said closes, to the value of five pounds, and also then and there took and carried away two cart-loads of timber arising therefrom to the value of forty shillings, continuing the said trespass as to the eating up, treading down and consuming the said grafs and corn with feet in walking, and with the said cattle in the said closes on divers days and times from the said twenty-first day of *January* in the year of our Lord aforesaid, until the day of exhibiting of this bill, to wit, the twenty-third day of *October* in the twenty-sixth year of the reign of our sovereign lord *Charles* the second now king of *England, &c.* and did other injuries to him against the peace of our said lord the present king, to the damage of the said G. of fifty pounds: And thereupon he brings suit, &c.

C. with the plaintiff, }
 B. with the defendant, } pledges, &c.

And the said R. D. W. D. and H. D. by *Plea*
 F. B. their attorney, come and defend the
 force and injury, when, &c. And as to the *Quoad venire*
 coming with force and arms, or whatsoever is *vi & armis,*
 against the peace of our said lord the present
 king, say that they are not guilty thereof: *Not guilty.*
 And of this they put themselves upon the
 country: And the said G. B. does so likewise: *Issue.*
 And as to the residue of the said trespass in *As to the re-*
 the said declaration above supposed to be *sidue,*
 done, the said R. W. and H. say, that the *Actio non,*
 said G. ought not to have or maintain his said *&c.*
 action thereupon against them, because they
 say, that the said closes, in which the said *Because the*
 trespass is above supposed to be done, are and *closes were the*
 at the said time in which, &c. were the soil *freehold of one*
 and freehold of one H. B. widow, by which *H. B.*
 the said R. W. and H. as servants of the said *And defen-*
 H. and by her command, at the said time in *dants as her*
 which, &c. broke and entered the said closes *servants, and*
 in which, &c. as the proper closes, soil and *by her com-*
 freehold of the said H. and with their feet in *mand, entered,*
 walking trod down and consumed the said *&c.*
 grafs growing in the said closes as the proper
 grafs of the said H. and with cattle eat up,
 trod down, and consumed the said grafs and
 corn growing in the said closes, as the proper
 grafs and corn of the said H. and then and
 there cut down and felled the said two oaks
 growing in the said closes as the proper trees
 of

of the said *H.* and then and there took and carried away the timber arising therefrom as the proper timber of the said *H.* continuing the eating up, treading down, and consuming the grass and corn in the said closes at the said divers days and times by the time in the said declaration above-mentioned, as it was lawful for them: And this they are ready to verify; Wherefore they pray judgment if the said *G.* ought to have or maintain his said action thereof against them.

Jo. Tremayne.

*Replication,
that the closes
were the free-
hold of the
plaintiff.*

And the said *G.* says, that he by any thing by the said *R. W.* and *H.* above by pleading alledged ought not to be barred from having his said action thereof against them the said *R. W.* and *H.* because he says, that the said closes called the *Easter twelve acres*, the *Wester twelve acres*, and *Owels*, at the said time in which, &c. and at the said other days and times in the said declaration above-mentioned, were the proper soil and freehold of the said *G.* And that the said *R. W.* and *H.* of their own proper injury, at the said time in which, &c. broke and entered the said closes, and with feet in walking trod down and consumed the said grass, and with cattle eat up, trod down, and consumed the said grass and corn of the said *G.* and cut down and felled the said two oaks, and took and carried away the timber arising therefrom, continuing the said trespass as to the eating up, treading down, and consuming the said grass and corn in the said

said closes at the said divers days and times by the said time in the said declaration above-mentioned, in manner and form as the said G. above complains thereof against them; *without this*, that the said closes, in which *Traverse*, the said trespass is above supposed to be done, are, and at the said time in which, &c. were the soil and freehold of the said H. B. widow, in manner and form as the said R. W. and H. have above by pleading alledged; And this &c. Wherefore, &c.

Henry Pollenfen,

Stafford, I T is granted by the court here, *Infant admitted to sue by prochein amy.* to wit, I that J. H. widow, sue for C. H. who is under the age of one and twenty years, as next friend of the said C. against P. W. of a plea of trespass and assault.

Stafford, to wit. P. W. puts in his place *Warrant of* P. C. his attorney, against C. H. of the plea *attorney for the defendant.* aforesaid.

Stafford, to wit. *Be it remembered*, That *Memorandum*, heretofore, to wit, in the term of St. Michael, *declaration of a precedent term.* last past, before our lady the queen at *Westminster*, came C. H. who is under the age of one and twenty years, by J. H. his next friend, hereunto specially admitted by the court, and brought into the court of our said lady the queen then there, his certain bill against P. W. being in the custody of the marshal, &c. of a plea of trespass and assault; and there are pledges of the prosecution, to

Declaration by an infant for an assault and battery.
 Lill. Ent. 429.

wit, *John Doe* and *Richard Roe*; which said bill follows in these words, to wit, *Stafford*, to wit, *C. H.* who is within the age of one and twenty years, by *J. H.* his next friend, hereunto specially admitted by the court, complains of *P. W.* being in the custody of the marshal, &c. for that he on the first day of *October* in the sixth year of the reign of our lady the present queen, with force and arms, to wit, with swords, staves and knives, made an assault upon the said *C.* at *Slowe* in the county aforesaid, and beat, wounded and evilly treated him, so that his life was greatly despaired of, and then and there did other injuries to him against the peace of our said lady the present queen, to the damage of the said *C.* of fifty pounds: And thereupon he brings suit, &c.

Impar lance.

And now at this day, to wit, on *Friday* next after the octave of *St. Hilary* in this same term, until which day the said *P. W.* had leave to imparle to the said bill, and then to answer, &c. before our lady the queen at *Westminster* came as well the said *C.* by his said next friend, as the said *P. W.* by *P. C.* his attorney, and the said *P. W.* defends the force and injury, when, &c. And as to the coming with force and arms, or whatever that is against the peace of our said lady the present queen, and also the wounding of the said *C. H.* the said *P.* says that he is not guilty thereof: And of this he puts himself upon the country: And the said *C.* does so likewise; And as to the residue of the said trespass and assault above supposed, the said *P.* says, that the

Plea.
Quoad vi & armis non cul

Issue thereon.
As to the resi-
due the plain-
tiff came into

the said C. ought not to have or maintain his *a stable (in the*
 said action thereupon against him, because he *county of Che-*
 says, that one E. M. esq; long before the said *ster) of defen-*
 time in which the said trespass and assault is *dant's master's,*
 above supposed to have been done, and also *and frightened*
the horses.
 at the said time in which, &c. was possessed
 of a stable in *Nantwich* in the county of *Che-*
ster, in which said stable the said E. at the
 time in which, &c. kept his horses; and the
 said E. being so thereof possessed, the said C.
 at the same time in which &c. the said tres-
 pass is above supposed to have been done, to
 wit, on the said first day of *October* in the sixth
 year aforesaid, at *Nantwich* aforesaid in the
 county aforesaid, with force of arms and
 against the will of the said E. entered into
 the stable of the said E. in and upon the pos-
 session of the said E. and disturbed the said E.
 in the quiet possession thereof, and disturbed,
 frightened and startled certain horses of the
 said E. then being in the said stable; upon
 which the said P. then being a servant of the
 said E. and having the care of the said stable
 and of the said horses in the said stable, by
 the command of the said E. his master, and
 by his order, at the same time in which, &c.
 came to the said C. then being in the said
 stable, and requested him, that he would go
 out of the said stable and do no further da-
 mage in the said stable; and the said C. then
 would not go out of the said stable; whereby
 the said P. at the same time in which, &c. *And defendant*
 as servant of the said E. and in defence of his *to put him out*
 possession of the said stable and of his horses *molliter ma-*
 nus imposuit.

*Trespas of the
trespass and
assault.*

the said C. to go out of the said stable, then and there softly put his hands upon the said C. then being in the said stable, to put the said C. out of the said stable, as it was lawful for him; which are the same residue of the trespass and assault aforesaid, whereof the said C. now above complains; *without this* that the said P. is guilty of the trespass and assault aforesaid, at *Stone* aforesaid, or elsewhere out of *Nantwich* aforesaid in the county of *Chester*: And this he is ready to verify: Wherefore he prays judgment if the said C. ought to have or maintain his said action thereupon against him, &c.

*Replication de
injuria sua
propria.*

And the said C. says, that he, by any thing by the said P. above by pleading alledged, ought not to be barred from having his said action thereupon against him, because he says, that the said P. of his own proper injury, without such cause as by him the said P. is above by pleading alledged, made an assault upon the said C. and beat, wounded, and evilly treated the said C. in manner and form as the said C. above complains against him; And this he prays may be inquired by the country; And the said P. does so likewise; And because the several issues between the said parties above joined ought to be tried by men of the county palatine of *Chester*, where the writ of our lord the king does not go, and not elsewhere; Therefore the record of the said plaint is sent to the justices of our lady the queen of the said county of *Chester*, so that the said justices, by writ of our lady the queen of the county duly to be made, cause
it

*Issue.
Suggestion that
the issues are
triable in
Chester.*

*Award of
Mittimus to
county pa-*

It to be commanded to the sheriff of the same See Thef. county, that he cause to come before the ju- Brev. 164. stices of our said lady the queen of the county of *Chester* aforesaid, at the next assises for that county after the said record shall be delivered to them, twelve free and lawful men of the body of the county palatine aforesaid; by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. and when those issues shall be tried, that then the said justices send the record of the said plaint, with all that shall be done thereupon before them in the said court of our said lady the queen there, to our said lady the queen at *Westminster*, at a certain day which the said justices of the said county palatine shall prefix to the said parties in the same court there, to hear their judgment thereupon, &c. and the said C. is told to prosecute with effect at his peril, &c.

Of the term of the Holy Trinity in the thirteenth and fourteenth years of the reign of our sovereign lord king George the second.

Roll

Lee.

Essex, **B**E it remembered, that on *Wednes-* Memorandum
to wit, **B** day next after the morrow of the of the same
Holy Trinity in this same term before our so- term.
vereign lord the king at *Westminster*, cometh
J. C. by C. B. his attorney, and bringeth in
K k 2 the

Trespafs.

*Declaration
for a trespass
in entring
plaintiff's close
cutting and
carrying away
reeds.*

the court of our said lord the king now here his bill against J. S. esq; being in the custody of the marshal of the *Marshalsea* of our lord the king before the king himself, of a plea of trespass; and there are pledges of the prosecution, that is to say, *John Doe* and *Richard Roe*, which said bill followeth in these words, to wit, *Essex*, to wit, J. C. complains of J. S. esq; in the custody of the marshal of the *Marshalsea* of our lord the king before the king himself, *For that* the said J. on the first day of *December* in the year of our Lord 1737. and at divers other days and times between that day and the day of exhibiting of this bill, with force and arms broke and entered the close of the said J. to wit, one piece of ground called the *Reed-shore* adjoining on the north east side thereof on a certain creek called *Barking Creek*, and on the south west side thereof, in a certain close in the occupation of S. B. commonly known by the name of the *Ten Acres*, at the parish of *Barking* in the said county of *Essex*, and trod down and consumed with his feet in walking the grass and reeds of the said J. there growing of the value of forty shillings, and cut, took, carried away, detained, and converted to his own use the reeds, to wit, forty cart loads of reeds of the said J. there growing of the value of twenty pounds, and cut, took, carried away, detained and converted to his own use other reeds, to wit, forty cart-loads of reeds of the said J. of the value of twenty pounds, found at the parish aforesaid, and did other wrongs to the said J. against the peace
of

of the said lord the king, to the damage of the said J. of forty pounds. And thereupon he brings suit, &c.

And the said J. by D. G. his attorney, *Plea.* comes and defends the force and injury, when, &c. And as to the coming with force and arms, and whatever is against the peace of *Quoad vi & armis non cul.* the said lord the king, and all the said trespass above supposed to be done, except the breaking and entering the said close called the *Reed-shore*, in which, &c. and the treading down and consuming with feet in walking the said grass and reeds there growing, and the cutting, taking, carrying away, detaining and converting to his own use the said other reeds there growing, says, that he is not thereof guilty, as the said J. hath thereof above complained against him: And hereupon he puts himself on the country; And the said J. does *Issue thereon, as to the residue,* so likewise: And as to the breaking and entering of the said close called the *Reed-shore*, in which, &c. and the treading down and consuming with his feet in walking the said grass and reeds there growing, and the cutting, taking, carrying away, detaining and converting to his own use the said other reeds there growing, the said J. says, that the said J. ought not therefore to have or maintain his said action against him, because he says, that the said close, in which the said trespass was done at the said several times, when, &c. and from time whereof the memory of man is not to the contrary, was and is called and known as well by the name of the *Foreland* as

the locus in quo,

Parcel of another close.

Whereof A. T. seised in fee, who conveyed to defendant and R. S.

Lease.

Profert.

by the name of the *Reed-shore*, and for all that time wa's and is parcel of the said close called the *Ten Acres*, of which said close called the *Ten Acres*, whereof, &c. with the appurtenances, *A. T.* spinster, long before the said time, when, &c. was seised in her demesne as of fee; and being so seised thereof, she the said *A.* long before the said time, when, &c. to wit, by an indenture made at the parish of *Barking* aforesaid on the fifth day of *April* in the year of our Lord 1737, between the said *A.* by the name of *A. T.* of *Charter-house-yard* in the county of *Middlesex*, spinster, one of the daughters and devisees of *J. T.* late of the same place, esq; deceased, of the first part, and the said *J.* and Sir *R. S.* bart. by the names of *J. S.* of *Upton* in the parish of *West-Ham* in the county of *Essex* aforesaid, esq; and Sir *R. S.* of *Buckland* in the parish of *Lymington* in the county of *Southampton*, bart. of the other part, one part of which indenture sealed with the seal of the said *A.* the said *J.* brings here into court, bearing date the same day and year, for and in consideration of a certain sum of money therein mentioned, did bargain and sell the said close whereof, &c. with the appurtenances (among other things) to the said *J.* and Sir *R.* To have and to hold to the said *J.* and Sir *R.* from the day next before the day of the date of that indenture for and during one whole year from thence next ensuing, and fully to be complete and ended, as by the said indenture more fully appears; by virtue of which said bargain and sale, and by force of the statute for
trans-

transferring uses into possession, they the said
J. and Sir *R.* became possessed of the said
close, whereof, &c. with the appurtenances
for and during one whole year, the reversion
thereof belonging to the said *A.* and her heirs;
and being so possessed thereof, and the rever-
sion thereof belonging to the said *A.* and her
heirs as aforesaid, she the said *A.* by another
indenture made at the parish of *Barking* afore-
said on the sixth day of *April* in the year of *Release.*
our Lord 1737 aforesaid, between the said *A.*
by the name of *A. T.* of *Charter-house-yard* in
the county of *Middlesex* aforesaid, spinster,
one of the daughters and devisees of the said
J. T. late of the same place, esq; deceased, of
the one part, and the said *J.* and Sir *R.* by
the names of *J. S.* of *Upton* in the parish of
West Ham aforesaid in the county of *Essex*
aforesaid, esq; and Sir *R. S.* of *Buckland* in
the parish of *Lymington* aforesaid in the county
of *Southampton* aforesaid, bart. of the other
part, one part of which said last mentioned *Profert.*
indenture sealed with the seal of the said *A.*
the said *J.* brings here into court, bearing
date the same day and year, for the conside-
ration therein mentioned, did release unto the
said *J.* and Sir *R.* the reversion of the said
close, whereof, &c. with the appurtenances
among other things, To have and to hold
unto the said *J.* and Sir *R.* and the heirs and
assigns of the said *J.* to and for the only
proper use and behoof of the said *J.* and Sir
R. and of the heirs and assigns of the said *J.*
for ever, as by the said last mentioned inden-
ture

Whereby defendant and R. S. became seised.

That plaintiff claiming right,

entered on the possession of defendant and R. S.

Whereupon defendant in his own right, and in right of R. S. and by his command re-entered, and justifies.

ture more fully appears; by virtue of which said bargain and sale and release, and by force of the statute for transferring uses into possession, they the said *J.* and Sir *R.* became seised of the said close, whereof, &c. with their appurtenances in their demesne as of freehold for and during their natural lives; and being so seised thereof, the said *J.* claiming the said close called the *Reed-shore*, in which, &c. parcel, &c. by virtue of a certain deed of feoffment to him thereof made by the said *A.* before the making of the said indenture of bargain and sale, whereas no estate or interest in the said close, in which, &c. parcel, &c. passed into the possession of the said *J.* by virtue of the said deed of feoffment, afterwards, and before the said first time, when, &c. to wit, on the thirtieth day of *November* in the year of our Lord 1737 aforesaid, entered into the said close in which, &c. parcel, &c. in and upon the possession of the said *J.* and Sir *R.* thereof, and ejected, expelled, and put out the said *J.* and Sir *R.* from their possession and occupation thereof; whereupon he the said *J.* in his own right and in the right of the said Sir *R.* and by his command, afterwards, to wit, on the said first day of *December*, in which, &c. re-entered the said close, in which, &c. parcel, &c. and on that day, and at divers other days, and times between that day and the day of the exhibiting of the said bill of the said *J.* against him, broke and entered that close, in which, &c. as the close of the said *J.* and Sir *R.* and trod down and consumed with his feet in walking

I

walking the said grass and reeds there growing as the grass and reeds of the said J. and Sir R. and cut, took and carried away, detained and converted to his own use the said other reeds there growing as the reeds of the said J. and Sir R. as it was lawful for him: And this he is ready to verify: Wherefore he prays judgment, if the said J. ought to have or maintain his said action therefore against him, &c.

Thomas Denison.

And the said J. as to the said plea of the *Replication*, said J. as to the breaking and entring of the said close, in which, &c. and the treading down and consuming with his feet in walking the said grass and reeds there growing, and the cutting, taking, carrying away, detaining and converting to his own use the said other reeds there growing, by him done as aforesaid, by him above pleaded in bar, says, that by reason of any thing above pleaded by the said J. in that respect, he ought not to be barred from having his said action therefore against him, because protesting that the said close, in which, &c. at the said several times when, &c. was not called the *Foreland*, as the said J. hath by his said plea in that respect above alledged, for replication in this respect the said J. says, that the said close in the said declaration of the said J. above-mentioned, in which, &c. now is and at the several times when, &c. and from time whereof the memory of man is not to the contrary, has been parcel

The locus in quo,

*Parcel of the
manor of B.*

*and granted by
copy*

*to the plaintiff
and his wife
in fee.*

parcel of the manor of *Barking* in the said county, and a customary tenement of the said manor, and demised and demiseable by the copy of the rolls of the court of the said manor by the lord of the said manor, by his steward of the court of the said manor or his deputy for the time being, to any person or persons willing to take the same in fee-simple or otherwise, at the will of the lord according to the custom of the said manor; of which said manor, with the appurtenances, Sir *W. H.* knight and baronet, one of the aldermen of the city of *London*, was seised in his demesne as of fee; and being so seised thereof he the said Sir *W.* at his court of his said manor held in and for his said manor on *Thursday* the fifth day of *April* in the year of our Lord 1733, by *E. G.* esq; then deputy of *W. N.* esq; then steward of the court of the said manor, by the copy of rolls of the court of the same manor, granted the said close, with the appurtenances, to the said *J.* and *S.* his wife, to have and to hold to the said *J.* and *S.* his wife, and their heirs and assigns for ever, at the will of the lord, according to the custom of the said manor; by virtue of which said grant, they the said *J.* and *S.* his wife, entered into the said close, with the appurtenances so granted to them as aforesaid, and at the said several times when, &c. were, and still are seised thereof in their demesne as of fee, at the will of the lord, according to the custom of the said manor; and being so seised thereof, the said *J.* of his own wrong, at the said several times, when, &c. broke and entered

entred the said close of the said J. in which
Ec. and trod down and consumed with his
 feet in walking the said gras and reeds there
 growing, and cut, took, carried away, de-
 tained and converted to his own use the said
 other reeds there growing, as the said J. hath
 thereof above complained against him; *with-
 out this,* that the said close in which, *Ec.* was
 parcel of the said close called the *Ten Acres*, as
 the said J. hath by his said plea above al-
 ledged: And this he is ready to verify!
 Wherefore, inasmuch as the said J. hath
 above acknowledged the said breaking and
 entring of the said close in which, *Ec.* and
 the treading down and consuming with his
 feet in walking the said gras and reeds there
 growing, and the cutting, taking, carrying
 away, detaining and converting to his own use
 the said other reeds there growing, by him
 done as aforesaid, the said J. prays judgment
 and his damages by reason of that trespass,
 to be adjudged to him, *Ec.*

Edward Green.

And the said J. says as before, that the
 said close in which, *Ec.* was parcel of the said
 close called the *Ten Acres*, as the said J. has
 by his said plea above alledged: And here-
 upon he puts himself upon the country; And
 the said J. does so likewise; Therefore as well
 to try this issue as the said other issue above
 joined between the parties, let the jurors come
 before our lord the king at *Westminster* on
Wednesday next after three weeks from the
 day

*Rejoinder,
 That it was
 parcel, Ec.*

*And Issue.
 Venire a-
 ward to try
 both issues.*

Trespafs.

day of the *Holy Trinity*, who are in no wise related either to the said *J. C.* or to the said *J. S.* to make a certain jury of the country between the said parties of the plea aforesaid, to recognize upon their oaths the whole truth of and concerning the premises, because as well the said *J. S.* as the said *J. C.* between whom the matter in variance is, have put themselves upon that jury; The same day is given to the parties aforesaid at the same place.

Hilary 12 Geo. 2.

Memorandum
of a precedent
term.

Suffex, **BE** it remembered, That in the term to wit, of *St. Michael* last past before our lord the king at *Westminster* came *P. S.* esq; by ——— his attorney, and brought in the court of our said lord the king then there his bill against *J. B.* in the custody of the marshal of the king's *Marshalsea* before the king himself, of a plea of trespass upon the case; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*; which said bill follows in these words; *Suffex*, to wit, *P. S.* esq; complains of *J. B.* in the custody of the marshal, &c. For that the said *J.* on the ninth day of *June* in the eleventh year of the reign of our present sovereign lord the king, with force and arms did break and enter the hop-gardens (to wit, three hop-gardens) of the said *P.* at the parish of *Wivelsfield* in the county aforesaid, and did pull up, throw down and prostrate the hop-poles, (to wit, 12,000 hop-

Declaration in
trespass for
entering the
plaintiff's hop-
gardens, pul-
ling down the
hop-poles, and
cutting the hop-
buds.

hop-poles) of him the said *P.* set up and standing in his soil in the hop-gardens aforesaid, and did cut, crop, break, bruise, and spoil the hop-binds (to wit, 100,000 hop-binds) of the said *P.* to the value of 50 *l.* growing in the hop-gardens aforesaid, whereby the said *P.* lost the greatest part of the profit of the hop-gardens aforesaid for a long time (to wit, for — then next following) and that the said *J.* on the ninth day of June in the eleventh year aforesaid, with force and arms, did break and enter the hop-garden of the said *P.* at the parish of *Linefield* in the county aforesaid, and did pull up, throw down and prostrate the hop-poles (to wit, 3000 hop-poles) of the said *P.* set up and standing in the same hop-garden, and did cut, crop, break, bruise and spoil the hop-binds, (to wit, 30,000 hop-binds) of the said *P.* to the value of 30 *l.* growing in the same hop-garden, whereby the said *P.* lost the greatest part of the profit of his last mentioned hop-garden for a long time, to wit, for — then next following, and did other wrongs to the said *P.* to his great damage, and against the peace of our said sovereign lord the king, to the damage of the said *P.* of 60 *l.* And therefore he brings his suit, &c.

To which the defendant pleaded the general issue.

Hilary

Hilary 36, 37 Car. 2. ro. 1157.

B. R. Declaration in trespass, the plaintiff being removed out of the county court, because the defendant pleaded liberum tenementum.

Lill. Ent. 437.

Kent, *A. B.* lately in the county court of *to wit*, *A.* Sir *C. D.* knt. sheriff of the county aforesaid, at *M.* in the county aforesaid, complained against *E. F.* of a plea of trespass; which said plaintiff, at the prayer of the said *A. B.* is had here at this day, to wit, from the day of *Easter* in fifteen days, by the writ of our lord the king of *recordari facias loquelam*, for that the said *E. F.* in his plea in the said county court, pleads freehold; and now at this day came as well the said *A. B.* by *J. L.* his attorney, as the said *E. F.* by *R. S.* his attorney: And upon this the said *A. B.* by his said attorney complains, *that* [here insert the declaration.]

Hilary 36, 37 Car. 2. ro. 1157.

Declaration in trespass removed by re. fa. lo. to have costs where the damages in the plaintiff are under forty shillings.

Lill. Ent. 375.

Rast. Ent.

570.

1 Brownl. 187.

Stat. 22, 23

Car. 2.

Kent, *SIR T. W.* bart. lately in the county court of *A. B.* esq; sheriff of the county aforesaid, held at *Maidstone* in the county aforesaid, complained against *C. D.* of a plea of trespass; which said plaintiff, at the prayer of the said *Sir T. W.* is had here at this day, to wit, from the day of the *Holy Trinity, &c.* by the writ of our lord the king of *recordari facias loquelam*: And now at this day comes as well the said *Sir T. W.* by *S. R.* his attorney, as the said *C. D.* by *E. F.* his attorney; And upon this the said *Sir T. W.* by his attorney, complains that, *&c.*

If

If the defendant in the country has pleaded liberum tenementum, and the plaintiff removes the plaint without cause shewn in the writ, and the plaint only is returned, and not the plea (which is necessary to be done, because the court ought not to take cognizance of a plea under forty shillings,) Quære how to declare, to wit, which said plaint, at the prayer of the said plaintiff, for that the said defendant in that plea in the said country has claimed freehold, is bad here, &c.

Lambert and Thurston, 1 W. & M. Trespas quare clausum fregit was removed by recordari, where the plaintiff declared to his damage thirty shillings. Defendant demurred, because the court had not jurisdiction of the cause where damages are under forty shillings. And it was urged pro quer. that the plaintiff had removed this cause, because the defendant had pleaded liberum tenementum, and so it is not triable in the county court. Co. Lit. 118. § 2 Inst.

Chief justice: It shall be intended, that this action was originally in this court, because it is vi & armis, which cannot be in a declaration in the county court; and where it is removed, the declaration ought to be without vi & armis.

Middlesex, D. D. complaineth of T. D. in Trespas for to wit, D. the custody of the marshal entering a of the Marshalsea of our lord the king, before house. the king himself being, of this, that he the said T. on the 23d day of May in the 6th year of the reign of our sovereign lord George II. now king of Great Britain, &c. with

Trespas.

with force and arms, to wit, with swords, staves and knives, broke and entered into the dwelling house of him the said *D.* at the parish of *St. Giles in the fields* in the county aforesaid, and greatly disturbed him the said *D.* in his quiet possession and occupation thereof, and drove out and removed him the said *D.* from his possession and occupation thereof, and the said *D.* being so driven out and removed for a long time, to wit, for the space of 24 hours kept out, and other enormities to him then and there did, against the peace of our said sovereign lord the now king, and to the damage of the said *D.* 50*l.* and thereof he bringeth suit, &c.

T. A. for the plaintiff. } Pledges, &c.
R. R. for the defendant. }

For an assault. *Middlesex*, to wit, *M. W.* widow, complaineth of *T. D.* in the custody of the marshal of the *Marshalsea* of our lord the king, before the king himself being, of this, that the said *T.* on the 23d day of *May* in the 6th year of the reign of our sovereign lord *George II.* now king of *Great Britain*, &c. with force and arms, to wit, with swords, staves and knives, at the parish of *St. Giles in the fields* in the county aforesaid, made an assault on the said *M.* and the said *M.* then and there beat, wounded, and evilly treated, so that her life was greatly despaired of, and other enormities to her then and there did against

against the peace of our ſaid ſovereign lord the now king; and to the damage of the ſaid *M.* 50 *l.* And thereof ſhe bringeth ſuit, &c.

T. A. for the plaintiff. } Pledges, &c.
R. R. for the defendant. }

Surry, T. B. complains of *T. C.* in the custody of the marshal of the *Martlessea* of the lord the king before the king himself, for that the ſaid *T. C.* on the 12th day of *January* in the year of our Lord 1747, with force and arms, to wit, with swords, staves and knives assaulted the ſaid *T. B.* at *Guilford* in the county aforesaid, and beat, wounded and ill treated him, so that his life was greatly despaired of, and imprisoned the ſaid *T. B.* there, and kept him detained there in prison for a long time, to wit, for the space of two days; and also for that the ſaid *T. C.* afterwards, to wit, on the ſaid 12th day of *January* in the year aforesaid, with force and arms, to wit, with swords, staves and knives, again assaulted the ſaid *T. B.* at *G.* aforesaid, and beat, wounded and ill treated him, so that his life was greatly despaired of, and did other wrongs to the ſaid *T. B.* against the peace of the ſaid lord the now king, &c. to the damage of the ſaid *T. B.* of 100 *l.* and therefore he bringeth his suit, &c.

And the ſaid *T. C.* by *A. B.* his attorney, cometh and defendeth the force and injury,

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L 1

when,

Declaration in trespass, assault and imprisonment. B. R.

Second count for another assault.

Plea, Not guilty.

Issue.

*And Not guilty
within four
years.*

when, &c. and saith, that he is Not guilty of the trespasses aforesaid, as the said *T. B.* above complaineth against him the said *T. C.* and of this he putteth himself upon the country; and the said *T. B.* doth likewise the same. And the said *T. C.* for further plea in this behalf, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such cases made and provided, further saith, that the said *T. B.* ought not to have or maintain his said action against him, because he saith that he is Not guilty of the said trespasses, or any of them within four years next before the exhibiting the said bill of the said *T. B.* and this the said *T. C.* is ready to verify: Wherefore he prayeth judgment if the said *T. B.* ought to have or maintain his said action against him, &c.

R. Draper.

*Replication,
that when
cause of ac-
tion accrued
defendant was
beyond sea,
and plaintiff
exhibited his
bill within
four years after
defendant's
first arrival
into this king-
dom. Stat.
4 & 5 Ann.
c. 16. §.*

And the said *T. B.* as to the said latter plea of the said *Thomas Cleland* above pleaded in bar saith, that he by any thing in that plea contained ought not to be barred from having his aforesaid action thereof maintained against the said *T. C.* because he saith, that he the said *T. C.* at the time when the said cause of action accrued to the said *T. B.* was abroad and beyond the seas, to wit, in the *West Indies*; and that the said *T. C.* afterwards, to wit, on the first day of *August* in the year of our Lord 1744, arrived from parts beyond the seas aforesaid in
this

this kingdom, to wit, at *Guilford* aforesaid, which said arrival of the said *T. C.* into this kingdom was the first and next arrival of the said *T. C.* into this kingdom after the said cause of action so accrued to the said *T. B.* And the said *T. B.* further saith, that he the said *T. B.* exhibited his said bill against the said *T. C.* within four years next after the said *T. C.* his said first arrival into this kingdom; and this he is ready to verify: Wherefore he prayeth judgment, and his damages on occasion of the premisses to be adjudged to him, &c.

E. G.

And the said *T. C.* says, that true it is, *Rejoinder?* that at the said times when the above trespasses are above supposed to have been committed, he the said *T. C.* was abroad beyond the seas, to wit, in the *West Indies*, as in the said replication is above alledged; but the said *T. C.* further saith, that afterwards and long before the said first day of *August* in the said year 1744, to wit, on the first day of *August* in the year of our Lord 1742. he the said *T. C.* first arrived from the said parts beyond the seas into this kingdom after the said causes of action accrued, to wit, at *Guilford* aforesaid; *without this*, that the said *T. B.* exhibited his said bill against him the said *T. C.* within four years next after the said *T. C.*'s first arrival into this kingdom, in manner and form as the said *T. B.* hath in his said replication above alledged; and this he is ready to verify: Wherefore as before

Traverse.

he prays judgment, and that the said T. B. may be barred from having his said action in in this behalf against him, &c.

R. Draper.

*Declaration
for an assault
and imprison-
ment. B. R.*

Middlesex, Joseph Blis complains of *Robert Rawlings* in the custody of the marshal of the *Marshalsea* of our lord the king before the king himself being, for this, that the said R. on the 20th day of *October* in the year of our Lord 1736, with force and arms, to wit, with swords, staves and knives upon him the said J. at *Westminster* in the said county of *M.* made an assault and him did beat, wound and imprison, and evilly treat, so that of his life it was greatly despaired, and also without any reasonable cause, against the laws and customs of this kingdom, and against the peace of our sovereign lord the now king, then and there did imprison the said J. and for a long time, that is to say, for the space of two days detained him in prison, and other wrongs to him then and there did, to the great damage of the said J. and against the peace of our sovereign lord the now king; whereby the said J. saith that he is prejudiced and hath damage to the value of 30*l.* and thereof he brings suit, &c.

*Plea as to part
Not guilty.*

And the said R. by J. D. his attorney cometh and defendeth the force and injury, when, &c. and as to the coming with force and arms, and whatsoever is against the peace of our sovereign lord the now king, and

and all the trespass above supposed to be done, except the said assault upon him the said J. and the beating, imprisoning, and evilly treating him and detaining him in prison for the time mentioned in the said declaration, says, that he is Not guilty thereof; and of this he puts himself upon the country; and the said J. does so likewise. *Issue.*

And as to the said assault upon the said J. and the beating, imprisoning and evilly treating him and detaining him in prison above supposed to be done, the said R. saith, that the said J. ought not to have or maintain his said action therefore against him, because he saith, that before the said time, when, &c. to wit, at the court of record of his present majesty of his palace at *Westminster*, held at *Southwark* in the county of *Surry* within the jurisdiction of that court, on *Friday* the 8th day of *October* in the 10th year of the reign of his present majesty king *George* the second, before *William* duke of *Devonshire*, steward of the king's household, *Sir Philip Meadows*, knt. marshal of the said household, and *Sir Thomas Abney*, knt. steward of that court, then judges of the same court by virtue of the *Letters Patent* of *Charles* the second, late king of *England*, bearing date at *Westminster* the fourth day of *October* in the 16th year of his reign, the said R. R. levied a certain plaint against the said J. of a plea of trespass on the case to his damage of 10 l. for a cause of action arising at *Westminster* aforesaid within the jurisdiction of that court, and then and there

As to the residue a justification under process of the palace court at defendant's suit.

Letters patent dated 4 Oct. 16 Car. 2.

found

[aliter process.

found pledges of prosecuting the same plaint, to wit, *John Doe* and *Richard Roe*, and prayed process of the same court to be made against the said *J.* upon the said plaint; and thereupon such proceedings were had in the same court on the said plaint so levied as aforesaid, that afterwards, to wit, at the said court of record of his said majesty of his palace at *Westminster*, held at *Southwark* aforesaid within the jurisdiction of that court, on *Friday* the 15th day of *October* in the 10th year aforesaid before the said *W.* duke of *D.* steward of the king's household aforesaid, Sir *P. M.* knt. marshal of said household, and Sir *T. A.* knt. steward of that court, then judges of the same court by virtue of the letters patent aforesaid, there issued out of the same court a certain writ of his said majesty, directed to the bearers of the verge of his said majesty's household, the officers and ministers of that court, and every of them, that they, or any one of them, should take the said *J. B.* and *John Doe*, if they should be found within the jurisdiction of the said court, and them safely keep, so that they, or one of them, might have their bodies before the judges of the same court at the then next court of his said majesty's palace at *Westminster* aforesaid, on *Friday* the 22d day of *October* then next following, to be held at *Southwark* aforesaid in the said county of *S.* to answer to the said *Robert* of the said plea of trespass on the case, to his damage of 10 *l.* and that they or one of them should have there then that writ; and the

the said *R.* afterwards, and before the return of the said writ, and before the said time, when, &c. to wit, on the said 20th day of *October* at *Westminster* aforesaid, delivered the said writ to one *W. Kirk*, being then and continually afterwards, and at the return thereof one of the bearers of the verge of his said majesty's household, and an officer and minister of the said court of his said majesty's palace at *Westminster*, and requested him the said *W.* to execute the same in due form of law, by virtue of which said writ the said *W. K.* afterwards and before the return thereof, to wit, at the said time, when, &c. at *Westminster* aforesaid, and within the jurisdiction of the said court of his majesty's palace at *Westminster*, at the request of the said *R.* gently laid his hands on the said *J.* to arrest him by virtue of that writ, and then and there arrested him by virtue of the said writ, and kept him in custody there for the time mentioned in the said declaration (for want of sufficient bail for his appearance according to the exigency of the said writ), so that the said *W. K.* might have his body before the said judges mentioned in the said writ at the return thereof, to answer to the said *R.* in his plea aforesaid; and the said *W. K.* at the said then next court of our said lord the king of his palace at *Westminster*, held before the above named judges of the said court at *Southwark* aforesaid in the said county of *S.* within the jurisdiction of the said court, on *Friday* the 22d day of the said month of *October*, re-

turned upon the said writ to the said judges of the said court that he had took the body of the said *J.* and that he had the same ready at the day and place in the said writ mentioned, as by the said writ he was commanded; which are the same assault upon the said *J.* and the beating, imprisoning, and evilly treating him and detaining him in prison for the time mentioned in the said declaration, whereof the said *J.* above complains against the said *R.* and this he is ready to verify: Wherefore he prays judgment if the said *J.* ought to have or maintain his said action therefore against him, &c.

J. D.

*Replication de
injuria sua
propria.*

And the said *J.* to the said plea of the said *R.* as to the said assault upon the said *J.* and the beating, imprisoning, and evilly treating him and detaining him in prison aforesaid, saith, that the said *J.* ought not to be precluded from having his said action to be maintained against the said *R.* for the same, because he saith, that he the said *R.* at the said time, when, &c. at *Westminster* aforesaid, of his own wrong made an assault upon him the said *J.* and then and there beat, wounded, imprisoned, and evilly treated the said *J.* and detained him in prison during the time aforesaid, without any such cause by him the said *R.* at the time of his levying the plaint by him the said *R.* against the said *J.* above mentioned in the said plea; or any cause of action against the said *J.* arising within the jurisdiction of his said majesty's

jesty's palace court, in manner and form as the said *R.* hath above in pleading alledged; and this the said *J.* is ready to verify: Wherefore he prays judgment, and his damages by occasion of the premisses to be adjudged to him, &c.

J. M.

Middlesex, T. S. esq; complaineth of *J. F.* Declaration in
to wit, *T. S.* esq; in the custody of the *trespass for a*
marshal, &c. for that, that the said *J.* on *criminal con-*
the 10th day of *January* in the 10th year of *versation with*
the reign of the lady *A.* late queen of *Great* *the plaintiff's*
Britain, &c. at the parish of *St. Clement*
Danes in the said county of *M.* with force and
arms, &c. made an assault on *M.* the wife
of the said *T. S.* and then and there beat,
wounded, and ill treated the said *M.* and
also ravished, and then and there led away
the said *M.* and there retained and kept the
said *M.* from the said *T.* contrary to the will
of the said *T.* from that time until the 11th
day of ——— whereby the said *T.* for the
whole time aforesaid, there intirely lost the
comfort, love and affection which the said
T. might and could have had with his
said wife; and then and there did other
injuries to the said *T.* to the great da-
mage of the said *T.* and contrary to the
peace of the said late queen, and of our
said lord the present king. Wherefore the
said *T.* saith that he is injured and hath da-
mage

mage to the value of 10,000*l.* and thereof his brings fuit, &c. *

*Declaration in
trespafs, clau-
sum fregit,
treading down
the grafs, and
cutting down
and carrying
away trees.
R. R.*

Kent, M. W. complaineth againft *J. N.* in
to wit, *M.* custody of the marshal of the
Marſhalſea of our lord the king, before the
king himſelf, for this, to wit, that the ſaid *J.*
on the 10th day of *October* in the year of our
Lord 1744, and on divers other days and
times between that day and the 25th day of
December then next following, with force and
arms, &c. the cloſes of the ſaid *M.* that is to
ſay, one cloſe called the *Garden*, one other
cloſe called the *Morſery Ground*, and one other
cloſe called the *Fifteen Acres*, and one other
cloſe of the ſaid *M.* at the pariſh of *St. Ni-
cholas* and ——— in *Debiford* in the ſaid
county, he broke and entered, and the grafs
of the ſaid *M.* there lately growing, of the
value of 40*s.* with his feet in walking trod
down and conſumed, and the trees of the ſaid
M. that is to ſay, 500 aſh trees, 500 elm
trees, 500 yew trees, 500 apricot trees, 500
peach trees, 500 nectarine trees, 500 apple
trees, 500 pear trees, 500 plum trees, 500 cher-

* This declaration was drawn by *Mr. Reeve*; the
alterations were made by *Serjeant Pengelly*, he would not
let *carnaliter cognovit* ſtand, and ſaid *rapuit* was as well
left out, for if proved is felony, and deſtroys the action;
he ſaid it was beſt in all theſe actions to lay the declara-
tion as general as the caſe would allow: the words *alt-
enormia* letting the plaintiff into a large proof in theſe
actions.

Trespas.

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ry trees, 500 gooseberry trees, of the value of 200*l.* there lately growing, felled, cut down, dug up, took and carried away and converted and disposed thereof to his own use ; and other injuries to her then and there did against the peace of our lord the present king, and to the damage of the said *M.* 300*l.* and thereof she bringeth suit, &c.

Pledges, &c.

Writs, &c.

Trinity term in the eleventh and twelfth years of king George the second.

OUR lord the king sent to the sheriff of *Middlesex* his writ close in these words, *Entry of scire fieri inquir' against baron and feme executrix.* to wit, George the second, by the grace of God, of Great Britain, France and Ireland king, defender of the faith, &c. to the sheriff of *Middlesex* greeting : Whereas we heretofore commanded our sheriff of *Middlesex*, that of the goods and chattels which were of *W. B.* deceased, at the time of his death, in the hands of *J. W.* and *M.* his wife, executrix of the last will and testament of the said *W. B.* deceased, in his bailiwick, he should cause to be

Fi. fa. to sheriff of Middlesex, de bonis testatoris, si &c. et si non, &c. Costs de bonis propriis.

be made as well twenty-four pounds fourteen shillings, which *S. B.* widow, administratrix of all and singular the goods and chattels, rights and credits of *E. P.* deceased, at the time of his death, who died intestate, had in our court before us at *Westminster* recovered against them by occasion of the not performing of certain promises and undertakings made by the said *W. B.* in his life-time to the said *E. P.* in his life-time, as also twenty shillings and nine pounds sixteen shillings, which were adjudged to the said *S.* in our said court before us, for her costs and charges by her about her suit in that behalf expended; whereof the said *J.* and *M.* were convicted, as appeared to us of record, if they had so much in their hands to be administered; and if they had not so much, then the said twenty shillings and nine pounds sixteen shillings of the proper goods and chattels of the said *J.* and *M.* and that he should have that money before us at *Westminster*, at a certain day now past, to render to the said *S.* for her damages, costs and charges aforesaid: And our said sheriff of *Middlesex* at that day returned to us, that the said *J.* and *M.* had no goods or chattels in his bailiwick, which were of the said *W. B.* at the time of his death, in their hands to be administered, whereof he could cause to be made the said twenty-four pounds fourteen shillings of damages aforesaid, and twenty shillings and nine pounds sixteen shillings of costs and charges aforesaid, or any part thereof: And that the said *J.* and *M.* had no goods and chattels of their

*Return nulla
bona.*

their own proper goods and chattels in his bailiwick, whereof he could cause to be made the said twenty shillings, and nine pounds sixteen shillings of costs and charges aforesaid, or any part thereof: Whereupon, on the behalf of the said *S.* it was sufficiently testified in the court before us, that the said *J.* and *M.* had in the county of *Lincoln* sufficient goods and chattels which were of the said *W. B.* at the time of his decease, in their hands to be administered, whereof the said twenty-four pounds fourteen shillings, and twenty shillings and nine pounds sixteen shillings, might be caused to be made: And it was further testified in our said court before us, that the said *J.* and *M.* had in the said county of *Lincoln* sufficient of their own proper goods and chattels, whereof the said twenty shillings and nine pounds sixteen shillings might be caused to be made: *We* therefore commanded our sheriff of *Lincoln*, that of the goods and chattels which were of the said *W. B.* at the time of his death, in the hands of the said *J.* and *M.* in his bailiwick, he should cause to be made as well the said twenty-four pounds fourteen shillings, as the said twenty shillings and nine pounds sixteen shillings, if they had so much in their hands to be administered; and if they had not so much in their hands, then the said twenty shillings and nine pounds sixteen shillings of their own proper goods and chattels; and that he should have that money before us at *Westminster* at a certain day also now past, to render to the said *S.* for her damages, costs and charges aforesaid.

Fi. fa. to the
sheriff of Lin-
coln.

And

*Return costs
levied de bonis
propriis.*

*Nulla bona
testatoris.*

*Suggestion of a
Devastavit.*

And our said sheriff of *Lincoln* at that day returned to us, that by virtue of the said writ to him directed he had caused to be made of the proper goods and chattels of the said *J.* and *M.* the said sum of twenty shillings and nine pounds sixteen shillings for the said costs and charges, which money he had ready to render, as in the said writ he was commanded: *And* he did further certify, that the said *J.* and *M.* had not any goods and chattels which where of the said *W. B.* at the time of his death, in their hands to be administered, within his bailiwick, whereof he could cause to be made the said sum of twenty-four pounds fourteen shillings of damages aforesaid, or any part thereof: *And* because the said returns are conceived to be in delay of the execution of the damages aforesaid; and also for that in our said court before us, on behalf of the said *S.* it is sufficiently testified, that divers goods and chattels, which were of the said *W. B.* at the time of his death, have since the death of the said *W. B.* come to the hands and possession of the said *J.* and *M.* to be administered, which goods and chattels the said *J.* and *M.* have sold and wasted, and have converted and disposed of that money thereupon received to their own proper use; and that the residue of the goods and chattels which were of the said *W. B.* at the time of his decease, have been elained by the said *J.* and *M.* to places unknown to the said *S.* and by them converted to their own proper use, with intent that the execution of the damages aforesaid might not be made;

made; We being unwilling that those things which in our said court before us have been rightly acted or adjudged, should be rendred void by art or deceit, command you that of *Fieri facias.*

the goods and chattels which were of the said *W. B.* at the time of his decease, in the hands of the said *J.* and *M.* to be administered, in your bailiwick, you cause to be made the said sum of twenty-four pounds fourteen shillings of damages aforesaid, if you can levy the same; and that you have the money thereupon levied before us at *Westminster* on *Friday* next after the morrow of the *Holy Trinity*, to render to the said *S.* for her damages aforesaid; and if the said sum cannot be there- *If no goods, and a devastavit shall appear on inquisition, then*
upon levied, then if it shall appear to you by inquisition on the oath of good and lawful men of your bailiwick, in this behalf to be taken, or by any other methods whereby you *Sci. fa. quare.*

may the better understand or certify, that the said *J.* and *M.* his wife have sold, elained, waisted or converted, and disposed to their own proper use, goods and chattels which were of the said *W. B.* at the time of his decease, in their hands to be administered, to the value of the said twenty-four pounds fourteen shillings of the damages aforesaid, or any part thereof, that then by good and lawful men of your bailiwick you make known to the said *J.* and *M.* that they be before us at *Westminster* on *Friday* next after the morrow of the *Holy Trinity*, to shew if any thing they have or know to say for themselves, why the said *S.* ought not to have her execution against them for the said twenty-four pounds and four-

fourteen shillings for damages aforesaid, to be levied of the proper goods and chattels of the said *J.* and *M.* if it seem expedient, &c. and further to do and receive what our said court before us shall thereof then and there consider in this behalf: And have there then the names of those by whom you shall make known to them, and this writ. Witness Sir *W. L.* knight, at *Westminster*, the fifteenth day of *May* in the eleventh year of our reign.

Nulla bona.

*Inquisition and
devastavit
found.*

At which day before our lord the king at *Westminster* came the said *S.* in her proper person; and the sheriff, to wit, Sir *G. C.* knight, and *R. C.* esq; returned the said writ to him in form aforesaid, directed in manner and form following, to wit, That the said *J.* and *M.* had not any goods or chattels which were of the said *W. B.* deceased, at the time of his death, in their hands to be administered, in his bailiwick, whereof he could cause the said twenty-four pounds fourteen shillings of damages aforesaid, or any part thereof, to be made; and the said sheriff likewise returned a certain inquisition taken at the *Three Tuns* in *Brook street* near *Holborn* in the county of *Middlesex*, on the twenty-fifth day of *May* in the eleventh year of the reign of our sovereign lord *George* the second, now king of *Great Britain*, &c. before the said sheriff, by virtue of the said writ to him thereupon directed, on the oath of twelve good and lawful men of his bailiwick; whereby it was found that several goods and chattels which were of the said *W. B.* at the time of his death, had come to the hands and possession of the said *J.*

J. and M. to be administred, to the value of the said twenty-four pounds and fourteen shillings of damages aforesaid, which said goods and chattels they had sold, elained, wasted, converted and disposed to their own proper use: And the said sheriff likewise returned, that the said J. and M. had not any thing in his bailiwick whereby or by which he could make known to them, &c. and that they or either of them were not found in the same, and they did not come, nor did either of them come: Therefore, as before, it is commanded to the sheriff, that by good and lawful men of his bailiwick he make known to the said J. and M. that they be before our lord the king at *Westminster* on Monday next after fifteen days from the day of the *Holy Trinity*, to shew, if any thing they have or know to say for themselves, why the said S. ought not to have her execution against them of the said twenty-four pounds fourteen shillings for her damages aforesaid, to be levied of the proper goods and chattels of the said J. and M. if, &c. and further, &c. The same day is given to the said S. at the same place: At which day before our said lord the king at *Westminster* came the said S. in her proper person; and the said sheriff as before returned, that the said J. and M. had not any thing in his bailiwick, whereby or by which he could make known to them, and that they were not, nor was either of them found in the same, and the said J. and M. although at that day solemnly demanded did not, nor did either of

Nihil to the
Sci. fa.

Alias sci. fa.
awarded.

Nihil.

Judgment.

them come, but they made default. *It is* therefore considered that the said *S.* have her execution against the said *J.* and *M.* of the said twenty-four pounds fourteen shillings for her damages aforesaid, to be levied of the proper goods and chattels of the said *J.* and *M.* by the default of the said *J.* and *M.* &c.

B. R. Venire
facias in
ejectment by
original for a
trial at bar.

GEORGE the second, &c. To the sheriff of *Buckinghamshire*, greeting. We command you that you cause to come before us from the day of the *Holy Trinity* in three weeks, wheresoever we shall then be in *England*, twelve free and lawful men of your county, each of whom hath ten pound of lands, tenements or rents by the year at the least, by whom the truth of the matter may be the better known, and who neither to *J. S.* the plaintiff, nor to *J. P.* late of *Catesby* in the county of *Northampton*, esq; *T. S.* late of *Quainton* in the county of *Buckingham*, yeoman, *J. B.* late of *Quainton* aforesaid, widow, *J. F.* late of *Quainton* aforesaid, yeoman, *J. B.* late of *Quainton* aforesaid, yeoman, *J. C.* late of *Quainton* aforesaid, yeoman, *R. M.* late of *Quainton* aforesaid, yeoman, *T. S.* late of *Quainton* aforesaid, yeoman, *J. H.* late of *Quainton* aforesaid, yeoman, *R. C.* late of *Quainton* aforesaid, yeoman, Sir *J. F. A.* late of *Westminster* in the county of *Middlesex*, knt. *T. S.* late of *Quainton* aforesaid, yeoman, *R. W.* late of *Quainton* aforesaid, yeoman, *J. S.* late of *Quainton* aforesaid, yeoman, *M. G.* late of *Quainton* aforesaid,

said widow, J. S. late of *Quainton* aforesaid, yeoman, E. H. late of *Quainton* aforesaid, widow, W. C. late of *Quainton* aforesaid, yeoman, &c. or J. H. late of *Quainton* aforesaid, yeoman, defendants, are any ways related; to make a certain jury of the country between the parties aforesaid, of a plea of trespass and ejectment, because as well the aforesaid J. S. as the aforesaid J. P. T. S. J. B. &c. and J. H. between whom the matter is in dispute, have put themselves upon that jury; and have you then there the names of the jurors and this writ. Witness Sir W. L. knt. at *Westminster*, the second day of *June* in the eleventh year of our reign.

Ventris.

GEORGE the second, &c. To the she-^{B. R.} Distric-^{riff} of *Buckinghamshire*, greeting. We ^{gas in eject-} command you that you distrain Sir C. T. of ^{ment by origi-} *Thornton*, bart. Sir F. D. of *West Wickham*, ^{nal for a trial} bart. C. R. of *Great Missenden*, esq; C. P. of *Westbury*, esq; &c. and J. H. of *Great Marlow*, gent. being the jurors summoned in our court before us at *Westminster*, between J. S. plaintiff, and J. B. late of *Catesby* in the county of *Northampton*, esq; T. S. late of *Quainton* in the county of *Buckingham*, yeoman, J. B. late of *Quainton* aforesaid, widow, &c. and J. H. late of *Quainton* aforesaid, yeoman, defendants, by all their lands and chattels in your bailiwick, so that neither they, nor any one of them, intermeddle therewith, until you shall have another precept from us, and that you answer to us out of the issues of the

M m 2

same,

same, so that you have their bodies before us * on *Tuesday* next after one month from the day of *St. Michael*, wheresoever we shall then be in *England*, to make a certain jury of the country between the parties aforesaid of a plea of trespass and ejectment, and to hear their judgment thereupon of many defaults; and have you then there the names of that jury and this writ. Witness Sir *W. L.* knt. at *Westminster*, the † twenty-first day of *July* in the twelfth year of our reign.

Ventris.

*Award of ca.
sa.*

And hereupon the said *P.* comes before our lord the king at *Westminster* in his proper person, and prays the king's writ of *capias ad satisfaciendum* against the said *D.* to satisfy the said *P.* for the debt and damages aforesaid, to be directed to the sheriff of the said county of ———; and it is granted unto him; whereby the sheriff of the said county is commanded, that he take the said *D.* if he is to be found in his bailiwick, and that he keep him safely, so that he have his body before our lord the king at *Westminster* on ——— next after ——— to satisfy the said *P.* for his debt and damages aforesaid: The same day is given to the said *P.* at the said place: At which day before our lord the king at *Westminster* the said *P.* comes in his proper person:

*Return non
invent.*

* No such return. See *Vol. 1. p. 63.*

† *The quarto die post of the return of the venire.*

person: And the sheriff of the said county, namely, ———, returns, that the said *D.* is not found in his bailiwick: *Whereupon* the said *P.* prays another writ of our said lord the king *Award of Alias ca. fa.* to be directed to the sheriff of the same county in manner aforesaid; and it is likewise granted unto him; by which the sheriff of the said county is as before commanded, that he take the said *D.* if he is to be found in his bailiwick, and that he keep him safely, so that he have his body before our lord the king at *Westminster* on ——— next after ——— to satisfy the said *P.* for the debt and damages aforesaid: The same day is given to the said *P.* at the same place: *At* which day before our lord the king at *Westminster* the said *P.* comes in his proper person; and the sheriff of the said county did not send back the said writ, nor did he do any thing thereupon: Therefore the said *P.* prays another writ, &c.

Afterwards, that is to say, on — next *Award of an*
after — [the teste of the *elegit*] then *elegit.*
next ensuing, before our lord the king at
Westminster the said *P.* came by his attorney
aforesaid, and according to the form of the
statute in the like case made and provided,
elected to be delivered to him all the goods
and chattels of the said *D.* except the oxen
and beasts of his plough, and also a moiety
of all the land and tenements of the said *D.*
of which the said *D.* was seised on the —
next after — in the — year, 1766.
on which day the said judgment was given,

or at any time afterwards, to hold the said goods and chattels as his own proper goods and chattels, and also to hold the said moiety of all the said lands and tenements as his freehold to him and his assigns, by a reasonable price and extent, according to the form of the said statute, until he shall have fully levied thereof the said debt and damages: And the said *P.* prays a writ of our lord the king to be directed to the sheriff of the said county of — in manner aforesaid; and it is granted to him returnable before our lord the king at *Westminster* on — next after — : The same day is given to the said *P.* at the same place; At which day before our lord the king at *Westminster* the said *P.* came by his attorney aforesaid; and the sheriff of the said county of —, namely, *E. F.* esq; by virtue of the said writ to him directed, returned a certain inquisition taken before him at — in the county aforesaid on — the — day of — in the — year, &c. by the oath of twelve honest and lawful men of his bailiwick, which said inquisition followeth in these words, to wit, [set forth the inquisition *in hæc verba.*]

*Outlawry
reversed.*

London, EXIGENT against *T. D.* late of to wit, &c. returnable from the day of *Easter* in fifteen days, wheresoever, &c. outlawed in *London*, on *Monday* next after the feast of *St. Mark* the evangelist in the — year of the reign of, &c. at the suit of *H. H.* in a plea of trespass on the case to the damage of the said *H.* of one hundred pounds.

After-

Afterwards, to wit, of the term of ——— in the ——— year of the reign of, &c. the said outlawry was reversed for default of proclamation.

Examined by me S. C. the ——— day of ——— in the ——— year of the reign of, &c. by the record of the reversal of the said outlawry.

S. C. secondary.

And the said D. by ——— his attorney, comes and defends the wrong and injury, when, &c. And hereupon F. G. of, &c. and H. J. of, &c. [the bail with their additions] come in their proper persons before our lord the king at *Westminster*, and become pledges and bail, and each of them becomes pledge and bail for the said D. that if the said D. should happen to be convicted in the plea aforesaid, then the said F. and H. granted, and each of them for himself hath granted, that all such damages, costs and charges as should on this behalf be adjudged to the said P. should be taken and levied of their and each of their lands and chattels, to the use of the said P. if the said D. should not happen to pay the said damages to the said P. nor render himself on that account to the prison of the *Marshalsea* of our lord the king before the king himself.

——— To the Sheriff of M greeting. We command you that you take A. B. administrator of all and singular the goods and chattels which were of E. F. at the time of

Entry of a recognizance of bail after the declaration.
r Vol.

We Ca. sa. against an administrator for costs on a non prof.
B. R.

his death, who died intestate, as it is said, if he shall be found in your bailiwick, and safely keep him, so that you may have his body before us at *Westminster* on — next after — to satisfy *C. D.* of — which in our same court before us were adjudged to the said *C.* according to the form of the statute in such case lately made and provided, for his costs and charges sustained by him about (a) his defence in a certain action of a plea of debt at the suit of the said *A.* Whereupon the said *A.* did not afterwards prosecute that action whereof he is convicted, as appears to us of record. And have there then this writ, Witness, &c.

*The like on a
non prof. for
not declaring.*

(a) His defence in his appearance to our certain writ of *latitat* prosecuted against the said *C.* at the suit of the said *A.* And whereupon the said *A.* did not afterwards further prosecute that writ, as appears, &c.

*Ca. fa. on a
judgment in an
inferior court
removed by
writ of error.
Post sci. fa.
B. R.*

—— To the sheriff of *Devonshire*, greeting. We command you that you take *W. G.* if he shall be found in your bailiwick, and safely keep him, so that you may have his body before us on the octaves of *St. Hilary*, wheresoever we shall then be in *England*, to satisfy *W. D.* of five pounds three shillings and four-pence for his damages which he has sustained, as well by the occasion of the not performing certain promises and undertakings lately made by the said *W. G.* to the said *W. D.* as for his costs and charges expended by him about his suit in this behalf; whereof

in

in our court before *J. A.* esq; mayor of the borough of *Totnes* in your county, the said *W. G.* was convicted, as by the inspection of the record and process thereupon, which for certain causes we lately caused to come before us, as appears to us of record. - And whereupon in our court before us it is considered, that the said *W. D.* have execution thereof. And have there this writ. Witness, &c.

——— *To the sheriff of Middlesex, greeting.* Ca. fa. for a bailiff in replevin. B. R.
 We command you that you take *A. B.* if he shall be found in your bailiwick, and safely keep him, so that you may have his body before us from the day of *Easter* in one month, wheresoever we shall then be in *England*, to satisfy *C. D.* of twenty pounds for the arrears of a certain yearly rent of forty pounds due to the right hon. *T. lord L.* baron of *L.* for the half of one year, ended on the feast-day of *St. Michael* in the seventeenth year of our reign; as also of — which in our same court before us were adjudged to the said *C.* according to the form of the statute in such case lately made and provided, for his costs and charges expended by him about his suit in this behalf, whereof he is convicted, as appears to us of record. And have there this writ. Witness, &c.

——— *To the sheriffs of London, greeting.* Testatum ca. fa. thereon.
Whereas we lately commanded our sheriff of *Middlesex*, that he should take *A. B.* [as before to] as appears to us of record. And our said sheriff of *Middlesex* at that day returned
 to

to us, that the said *A.* was not found in his bailiwick. Upon which on the behalf of the said *C.* it is sufficiently testified in our court before us, that the said *A.* lurks and wanders in your bailiwick; *Therefore* we command you that you take him, if he shall be found in your bailiwick, and safely keep him, so that you may have his body before us on — wheresoever we shall then be in *England*, to satisfy the said *C.* of the said arrear of rent and costs and charges in form aforesaid adjudged. And have there this writ. Witness, &c.

Ca. fa. in
ejectment for a
defendant after
part levied by
fi. fa. B. R.

———— To the sheriffs of *London*, greeting.
Whereas we lately commanded you, that of the goods and chattels of *J. S.* in your bailiwick, you should cause to be made two hundred and twelve pounds, which were adjudged to Sir *W. C.* late of *Westminster* in the county of *Middlesex*, bart. according to the form of the statute thereupon lately made and provided, for his costs and charges expended by him about his defence in a certain action of trespass and ejectment of farm, at the suit of the said *J.* whereof the said *J.* is convicted, as appears to us of record; and that you should have the money before us on the octaves of the purification of the blessed *Mary* last past, wheresoever we should then be in *England*, to render to the said *W.* for his costs and charges aforesaid. And you at that day returned to us, that by virtue of our said writ to you thereupon directed, you had caused to be made of the goods and chattels

of the said *J.* twenty-eight pounds two shillings, parcel of the said costs and charges; and that you had caused the money to be delivered to the said *W.* in part in satisfaction of so much of the said costs and charges; and so you could not have the money before us ready at the day and place in the said writ mentioned; and that the said *J.* had no other or more goods or chattels in your bailiwick, whereof you could cause to be made the said residue of the said costs and charges, according to the command of the said writ. Therefore we command you that you take the said *J.* if he shall be found in your bailiwick, and safely keep him, so that you may have his body before us from the day of *Easter* in fifteen days wheresoever we shall then be in *England*, to satisfy the said *W.* of one hundred eighty-seven pounds eighteen shillings, residue of the said costs and charges, in form aforesaid adjudged. And have there this writ. Witness, &c.

———To the sheriff of *M.* greeting. We command you that you take *A. B.* if he shall be found in your bailiwick, and safely keep him, so that you may have his body before us at *Westminster* on——next after——to satisfy *C. D.* according to the form of the statute in such case lately made and provided, of——adjudged to the said *C.* for his costs and charges about his defence in a certain action in our court before us, against the said *C.* at the suit of the said *A.* of a plea of trespass upon the case. Whereupon the said *A.* did not

Ca. sa. on a
conduit for not
declaring.
B. R.

not afterwards prosecute the said writ within two terms; and whereof the said *A.* is convicted, as appears to us of record. And have there then this writ. Witness, &c.

Testatum ca.
sa. in debt for
residue, after
part levied by
fi. fa. B. R.

Recital of fi. fa.

and return.

—— To the sheriff of *Wiltshire*, greeting. Whereas by our writ we lately commanded *N. P.* esq; late sheriff of your county, that of the goods and chattels of *J. T.* otherwise called, &c. in his bailiwick he should cause to be made eight pounds of debt which *J. J.* lately in our court before us at *Westminster* had recovered against him, as also twenty-three shillings and four-pence, which in our same court before us were adjudged to the said *J. J.* for his damages which he had sustained, as well by the occasion of the detaining that debt, as for his costs and charges expended by him about his suit in this behalf, whereof he is convicted, as appears to us of record: And that he should have that money before us at *Westminster* on —— next after —— last past, to render to the said *J. J.* for the debt and damages aforesaid. And our said late sheriff of your county at that day returned to us, that he, by virtue of the said writ to him directed, had caused to be made of the goods and chattels of the said *J. T.* two pounds nine shillings and eight pence, parcel of the said debt and damages, which said money he had caused to be paid to the said *J. J.* in part of the debt and damages aforesaid: And the same sheriff further certified, that the said *J. T.* had no other or more goods or chattels within his bailiwick, whereof he could cause

cause to be made the residue of the said debt and damages or any parcel thereof. *And Recital of first*
whereas by our writ we lately commanded *ca. fa.*
 our sheriffs of *London*, that they should take the said *J. T.* if he should be found in their bailiwick, and safely keep him, so that they might have his body before us at *Westminster* on *Wednesday* next after fifteen days of *St. Martin*, to satisfy the said *J. J.* of six pounds thirteen shillings and eight pence, residue of the said debt and damages, in form aforesaid recovered. *And* our said sheriffs *London* at *and return.*
 that day returned to us, that the said *J. T.* was not found in their bailiwick. *Whereupon* on *Testatum.*
 the behalf of the said *J. J.* it is sufficiently testified in our court before us, that the said *J. T.* lurks and wanders in your county. *Therefore* we command you that you take the said *J. T.* if he shall be found in your bailiwick, and safely keep him, so that you may have his body before us at *Westminster* on *Tuesday* next after the octaves of the purification of the blessed *Mary*, to satisfy the said *J. J.* of the said six pounds thirteen shillings and eight pence, residue of the said debt and damages. And have there then this writ. Witness,
&c.

——— To the sheriff of *Cornwall*, greet- *Ca. fa. in debt*
 g. *Whereas* by our writ we lately com- *against an ex-*
 manded you, that of the goods and chattels of *ecutrix after a*
J. O. gent. one of the attornies of our court *devastavit re-*
 fore us, being otherwise called *W. O.* of *fi. fa. B. R.*
unceston in the county of *Cornwall*, gent.
 ceased, in the hands of *E. T.* widow, exe-
 cutrix

cutrix of the testament and last will of the said *W. O.* to be administered in your bailiwick, you should cause to be made seventy pounds, which *E. D.* gent. lately in our court before us recovered against the said *W.* in his lifetime, of debt, also four pounds ten shillings which in our same court before us were adjudged to the said *E. D.* for his damages which he sustained, as well by occasion of the detaining that debt, as for his costs and charges expended by him about his suit in this behalf, whereof he is convicted, as appears to us of record, if she had so much in her hands, then the said damages of the proper goods and chattels of the said *E. T.* And that you should have that money before us at *Westminster*, * on *Saturday* next after three weeks of *St. Michael* last past, to render to the said *E. D.* for the debt and damages aforesaid. And you at that day returned to us, that the said *E.* had sold and wasted diverse goods and chattels which were of the said *W.* at the time of his death, to the value of the debt and damages aforesaid; and had converted and disposed to her own use the money coming therefrom, so that you could not cause to be levied or made the said debt and damages of the goods and chattels of the said *W. G.* And you further certified to us, that the said *E.* had no goods or chattels in your bailiwick, whereof you could cause the said damages to be made. *Therefore* we command

Return.

* No such return. See *Vol. 1. p. 63.*

you, that you take the said *E. T.* if she shall be found in your bailiwick, and safely keep her, so that you may have her body before us at *Westminster* on — next after —, to satisfy the said *E.* of the said debt and damages, in form aforesaid. And have there then this writ. *Witness, &c.*

—— To the sheriff of *Devonshire*, greet- Ca. fa. against
ing. *Whereas* by our writ we lately com- an administra-
manded our sheriff of *Devonshire* aforesaid, trix in debt
your predecessor, that of the goods and chat- after a de-
stavit returned
tels of *C. S.* deceased, otherwise called, *&c.* on a fi. fa. of
at the time of his death, in the hands and parcel of the
custody of *E. S.* widow, administratrix, *&c.* debt. B. R.
in your bailiwick, he should cause to be made
one hundred and twenty pounds of debt, also
eleven pounds for his damages which *J. S.*
executor, *&c.* sustained, as well by the occa-
sion of the detaining that debt, as for his
costs and charges expended by him about his
suit in this behalf, whereof — is convicted,
as appears to us of record, if she had so much
in her hands, and if she had not so much in
her hands, then the said damages of the pro-
per goods and chattels of the said *E.* that he
should have that money before us at *West-*
minster at a certain day now past, to render
to the said *J. S.* executor, for the debt and
damages aforesaid. And our said sheriff of
Devonshire at that day returned to us amongst
other things, that divers goods and chattels
which were of the said *C. S.* at the time of his
death, to the value of eighty-four pounds,
parcel of the said debt, after the death of the
said

saïd C. and before the coming of that writ to him directed, had come to the hands of the saïd E. to be administered, which saïd goods and chattels the saïd E. before the coming of the saïd writ so to him directed, had wasted and converted and disposed to her own use, so that he could in no manner cause to be made the saïd one hundred and twenty pounds, or any parcel thereof, of the saïd goods and chattels: And he further certified to us, that the saïd E. has no goods or chattels in his bailiwick, whereof he could in any manner cause to be made the saïd eleven pounds of damages aforesaid, or any parcel thereof. *Therefore* we command you, that you take the saïd E. if she shall be found in your bailiwick, and safely keep her so that you may have her body before us at *Westminster* on — next after —, to satisfy the saïd J. S. the saïd eighty-four pounds, parcel of the saïd debt, in form aforesaid. And have there then this writ. Witness, &c.

Testatum ca.
sa. against the
plaintiff after
a verdict in
replevin.
B. R.

—— To the sheriff of *Warwickshire*, greeting. *Whereas* we lately commanded our sheriffs of the city of *Coventry*, that they should take M. lady D. widow, if she should be found in their bailiwick, and safely keep her, so that they might have her body before us at a certain day now past, wheresoever we should then be in *England*, to satisfy R. E. of nine pounds which in our court before us were adjudged to the saïd R. according to the form of the statute in such case lately made and provided, for his damages which he sustained,

sustained, as well by the occasion that the said *M.* in our said court before us unjustly prosecuted a certain plaint of a plea of taking and unjustly detaining of cattle against the said *R.* as by a certain jury of the country in that behalf was lately found, as for his costs and charges expended by him about his suit in this behalf, whereof she is convicted, as appears to us of record. And our said sheriffs of the city of *Coventry* at that day returned to us, that the said *M.* was not found in their bailiwick: Upon which, on the behalf of the said *R.* it is sufficiently testified in our court before us, that the said *M.* lurks and wanders in your county. Therefore we command you, that you take the said *M.* if she shall be found in your bailiwick, and safely keep her, so that you may have her body before us from the day of *Easter* in fifteen days, wheresoever we shall then be in *England*, to satisfy the said *R.* of the damages, costs and charges aforesaid. And have there this writ. Witness, &c.

— To the sheriff of *Leicestershire*, Testatnm ca.
greeting. Whereas we lately commanded ^{sa. against, one}
our sheriff of *Middlesex*, that he should take ^{bail in case.} *B. R.*
H. D. of *Lutterworth* in your county, gent.
bail of *E. D.* if he should be found in his
bailiwick, and safely keep him, so that he
might have his body at *Westminster* * on *Wed-*
nesday next after three weeks of *St. Michael*,
VOL. II. N n to

* No such return. See Vol. I. p. 63.

to satisfy *M. E.* of thirty pounds, for his damages which he sustained, as well by the occasion of the not performing certain promises and undertakings lately made by the said *E.* to the said *M.* as for his costs and charges expended by him about his suit in this behalf, whereof the said *E.* is convicted, as appears to us of record. *And whereupon* in our same court before us it is considered, that the said *M.* have his execution against the said *H.* of the damages aforesaid, according to the force, form and effect of a certain recognizance by the said *H.* in our court before us thereupon lately acknowledged to the said *M.* as also appears to us of record. *And* our said sheriff of *Middlesex* at that day returned to us, that the said *H.* was not found in his bailiwick: *Whereupon* on the behalf of the said *M.* it is sufficiently testified in our court before us, that the said *H.* lurks and wanders in your county. *Therefore* we command you, that you take the said *H.* if he shall be found in your bailiwick, and safely keep him, so that you may have his body before us at *Westminster* on — next after —, to satisfy the said *M.* of the damages aforesaid. And have there then this writ. Witness, &c.

Testatum ca.
sa. in debt and
for costs in er-
ror after judg-
ment. B. R.

— To the sheriff of *Essex*, greeting.
Whereas we lately commanded our sheriff of *Middlesex*, that he should take *A. B.* if he should be found in his bailiwick, and safely keep him, so that he might have his body before us on the octaves of *St. Hilary* where-soever we should then be in *England*, to satis-
fy

by C. D. of one hundred pounds of debt, which the said C. lately, in our court before our justices of the bench at *Westminster*, recovered against him, and of sixty three shillings which in our same court of the bench were adjudged to the said C. for the damages which he sustained by the occasion of the detaining of that debt; and also of ten pounds by our court before us adjudged to the said C. according to the form of the statute in such case lately made and provided, for his damages, costs and charges which he had by the occasion of the delaying of the execution of the said debt and damages, by the pretext of the prosecution of our certain writ of error by the said A. prosecuted in our said court before us, of and upon the premisses, whereof he is convicted, as by the inspection of the record and process thereupon, which for certain causes we caused to come before us, appears to us of record. And whereupon in our same court before us it is considered, that the said C. have thereupon his execution against the said A. of the debt, damages, costs and charges aforesaid. And our said sheriff of *Middlesex* at that day returned to us, that the said A. was not found in his bailwic: Upon which on the behalf of the said C. it is sufficiently testified in our said court before us, that the said A. lurks and wanders in your county. Therefore we command you, that you take him, if he shall be found in your bailwic, and safely keep him, so that you may have his body before us from——, wheresoever we shall then be in *England*, to satisfy the said C. of

the debt, damages, costs and charges aforesaid. And have there then this writ. Witness, &c.

Ca. sa. against
an executrix
by surviving
executors.

B. R.

Recital offi. sa.

—— To the sheriff of *Cornwall*, greeting. *Whereas* by our writ we lately commanded you, that of the goods and chattels which were of *W. D.* gent. deceased, lately called *W. D.* of, &c. at the time of his death in the hands of *C. D.* widow, executrix of the testament and last will of the said *W. D.* in your bailiwick, you should cause to be made two hundred pounds of debt, which *W. P. R. T.* clerk, and *J. H.* professor of divinity, surviving executors of the testament and last will of *A. P.* gent. deceased, lately in the court of the lord *William* the third, late king of *England*, &c. before the said late king at *Westminster* recovered against the said *C.* as also thirty-six shillings, which in the same court of the said lord the late king, before the king himself, were adjudged to the same *W. P. T. P. R. T.* and *J. H.* for their damages which they had sustained, as well by the occasion of the detaining of that debt, as for their costs and charges expended by them about their suit in that behalf, whereof she was convicted, as appeared to us of record, if she had so much in her hands, and if she had not so much in her hands, then the said damages of the proper goods and chattels of the said *C.* And whereupon it was considered in our court before us, that the said *W. P. T. P.* and *J. H.* the surviving executors of the said *A.* should have their execution against the

First sci. fa.

the said *C.* of the debt and damages aforesaid, to be levied of the goods and chattels which were of the said *W. D.* in the hands of the said *C.* to be administered, if she then had so much in her hands; if she then had not so much in her hands, then the said damages to be levied of the proper goods and chattels of the said *C.* And that you should have that money before us at *Westminster* on *Wednesday* next after five weeks of *Easter*, to render to the said *W. P. T. P.* and *J. H.* for the debt and damages aforesaid. And you the sheriff of *Cornwall* aforesaid, at that day returned to us, that the said *C.* had no goods or chattels in your bailiwick which were of the said *W. D.* at the time of his death in her hands to be administered, whereof you could cause to be made the debt or damages aforesaid, or any part thereof; nor had the said *C.* any her own proper goods or chattels in your bailiwick, whereof you could cause to be made the damages aforesaid, or any part thereof, according to the command of the said writ. And whereas thereupon in our court before us afterwards it was in such sort proceeded, that by our said court before us it was considered, that the said *W. P. T. P.* and *J. H.* the surviving executors of the said *A.* should have execution against the said *C.* of the said two hundred pounds of debt, as also the said thirty-six shillings for the damages, costs and charges aforesaid, to be levied of the proper goods and chattels of the said *C.* And it was further considered by our same court before us, that the said *W. P. T. P.* and *J. H.* should re-

Return nulla bona.

Judgment de bonis propriis..

cover against the said C. twenty-eight pounds for their costs and charges expended by them about their suit, by occasion of the prosecuting our writ of *scire facias* in that behalf by our same court before us adjudged to the said W. T. and J. at their request, according to the form of the statute in such case thereupon lately made and provided. *Therefore* we command you, that you take the said C. if she shall be found in your bailiwick, and safely keep her, so that you may have her body before us at *Westminster* on — next after — to satisfy the said W. P. T. P. and J. H. of the said two hundred pounds of debt, and the said thirty-six shillings for their costs and charges aforesaid, as of the said twenty-eight pounds for the said costs and charges adjudged as aforesaid to the said W. T. and J. according to the form of the said statute. And have there then this writ. Witness, &c.

Ca. ad restitutionem. a judgment in an inferior court being reversed on a writ of error. B. R.

Whereas J. C. lately in our court before the mayor of our borough of P. by the judgment of the same court, without our writ, according to the custom of the said borough, recovered against A. J. thirty pounds for his damages which he had sustained, as well by occasion, &c. [as in *ca. sa.*] whereof he was convicted, as appears to us by inspection of the record and process which we lately caused to come before us, for the cause of correcting error in the same, and which are now remaining before us; which said record and process being viewed and diligently examined, and fully

fully understood by our court before us, we, for divers errors found in the said record and process, have revoked and intirely annulled the said judgment; and we have further considered, that the said *A. J.* be restored to all things which he has lost by occasion of the said judgment; and now on the behalf of the said *A. J.* in our court before us we have been informed, that the said thirty pounds damages aforesaid have been levied by pretext of the said judgment before given and delivered to the said *J. C.* Therefore we command you, that if it shall appear to you, that the said *J. C.* has had execution of the said thirty pounds for the damages aforesaid, by virtue of the said judgment, then without delay cause the said *A. J.* to have full restitution of the said thirty pounds; and if you shall not be able to make restitution thereof to the said *A. J.* in form aforesaid, then take the said *J. C.* if, &c. wheresoever, &c. to satisfy the said *A. J.* for the said damages before had and received by the said *J. C.* by pretext of the said judgment. And have there this writ. Witness, &c.

——— To the sheriff of ———, greeting. *Cap in Wi-*
thernam, upon
a return ha-
bend. after a
plea of property
in a stranger.
B. R.
Whereas T. B. late of, &c. lately in our court before us, was summoned to answer *M. lady D. widow*, of a plea wherefore at the city of *Coventry*, in the county of the same city, in the king's highway there he took the cattle, to wit, five oxen and one heifer, of the said *M.* and unjustly detained them against gages and pledges; And the

said *T.* came into our said court, alledging and saying, that at the time the said cattle are supposed to have been taken, the property of the said cattle was in one *R. C.* widow, administratrix of all and singular the goods and chattels, rights and credits which were of *W. C.* her said husband deceased, at the time of his death, praying a return of the said cattle to be adjudged to him. And afterwards by a certain jury of the country, upon which as well the said *M.* as the said *T.* had thereupon put themselves on the——day of —— in the——year of our reign at——in the county of——before Sir *R. A.* knight of the bath, one of our justices of the bench, and *G. D.* esq; for that turn associated to the said Sir *R. A.* and *V. B.* esq; one of the barons of our exchequer, the presence of the said *V. B.* not being expected, by virtue of a writ of *Si non omnes, &c.* our justices assigned to take the assises in the county of——afore-said, by form of the statute in such case made and provided, taken by pretext of our writ of *Nisi prius*, it is found that at the time the said cattle are supposed to be taken, the property of the said cattle was in the said *R. C.* as the said *T.* alledged; by which in our court before us it was considered, that the said *M.* should take nothing by her said writ, but that she and her pledges for prosecuting should be in mercy for her false clamour thereupon. And that the said *T.* should thereupon go without day, and have a return of the said cattle irreplegiabie for ever. *By which* by our writ we lately commaded you, that with-
out

out delay you should cause the said T. to have return of the said cattle irreplegiabie in form afore said; and that you should make known to us on ———, wheresoever we should then be in *England*, in what manner you should have executed that writ. And you at that day returned to us, that before the coming of that writ, the said oxen and heifer were eloined to places unknown to you, whereby you was not able to return the said oxen and heifer to the said T. as you was commanded by the said writ. Therefore we command you, that you take in *Witbernam* of the cattle of the said M. to the value of the oxen and heifer before taken, and cause them to be delivered to the said T. to be detained by him until you can cause the oxen and heifer before taken to be returned. And that you put by gages and safe pledges the said M. that she be before us on ———, wheresoever we shall then be in *England*, to answer as well to us of the contempt, as to the said T. of the damages and injury done to him in this behalf. And have there this writ. Witness, &c.

———To our trusty and well beloved Sir T. J. kny. our chief justice of the bench, greeting. *Certiorari to the chief justice C. B. to certify the admission of an infant to sue by guardian. B. R.* Whereas we lately on the complaint of T. D. have been informed, that in the record and process, and also in giving of judgment of a plaint which was in our court before Sir F. N. kny. and his companions then our justices of the bench, by our writ between F. C. gent. and T. D. esq; for that the said T.

T. C. and T. D. jointly held one messuage, sixty acres of land, ten acres of meadow and forty acres of pasture, with the appurtenances, in P. and R. within the parish of L. in the county of G. the said T. D. denied to make partition thereof between them, according to the form of the statute in such case made and provided, and unjustly and against the form of the said statute, did not permit the same to be done, as it is said, manifest error hath intervened, to the great damage of the said T. D. of which said judgment we caused the record and process thereupon, for the sake of correcting errors in the same, to come before us. And it appears to us of record, and the said T. D. appearing in our same court before us, said, that where it appears by the said record sent to us that the said T. D. in the term of the *Holy Trinity* in the thirty-second year of our reign, came by J. C. gent. then his guardian in the said plea, and pleaded in the form specified in the said record; yet there is not any record of the admission of the said J. C. to appear and defend for the said T. D. then being an infant, in form aforesaid, as guardian of the said T. D. at the suit of the said T. C. in the plea aforesaid, remaining affiled in the said court of Common Bench of the said term, to warrant the said J. C. to be guardian for the said T. D. at the suit of the said T. C. in the plea aforesaid. And the said T. D. has prayed our writ to be directed to you, to certify to us the truth thereof more fully, which was granted him. And therefore we command you to search the rolls and other

other memorandums of the admission of infants to prosecute and defend by their guardians in the said county of *Cornwall*, of the said term of the *Holy Trinity* in the thirty-second year of our reign, remaining of record in your custody; and that you certify to us forthwith what you shall thereupon find in the same, as fully and intirely as it remains before you of record, together with this writ. Witness, &c.

—— To the sheriff of S. greeting. *Habere facias*
Whereas T. W. lately in our court before us *possessionem.*
at *Westminster*, by bill, without our writ, and *B. R.*
by the judgment of the same court, recovered
against *J. W.* his term yet to come, of and in
one mesuage, one garden, &c. with the appurtenances, situate, lying and being in *P.* in
your county, which *W. M.* on the first day of
October in the eighth year of our reign demised to the said *T.* for a term of years not yet
expired, to wit, from the twenty-eighth day
of *September* then last past to the full end and
term of five years thence next ensuing, and
fully to be complete and ended. By virtue
of which demise, the same *T.* entered upon
the same tenements, with the appurtenances,
and was thereof possessed until the said *J.*
afterwards, to wit, on the same first day of
October in the eighth year aforesaid, with
force and arms entered into the said tenements, with the appurtenances, and him the
said *T.* from his farm aforesaid, the said term
then and there not being expired, ejected,
drove out and amoved, and him the said *T.*
hath

hath withheld from his possession thereof, and still doth withhold, whereof the said *J.* is convicted, as appears to us of record. *Therefore* we command you, that without delay you cause the said *T.* to have his possession of his term aforesaid yet to come, of and in the tenements aforesaid, with the appurtenances; and in what manner you shall have executed this writ, do you make appear to us at *Westminster* on——next after——. And have you then there this writ. Witness, &c.

Habere facias
possessionem
on a double de-
mise. B. R.

——— To the Sheriff of *Kent* greeting:
Whereas *C. G.* gent. lately in our court before us, recovered against *O. B.* his term yet to come, of and in fourteen acres of land, seven acres of meadow and seven acres of pasture, with the appurtenances, situate, lying and being in *D.* in your county, which *Sir J. E. bart.* and *M. E. widow*, on the twentieth day of *September* in the sixth year of our reign demised to the said *C.* for a term of years which is not yet past, to wit, from the twenty-fourth day of *June* last past until the full end and term of seven years thence next following, and fully to be complete and ended. By virtue of which said demise, the said *C.* entered into the said tenements, with the appurtenances, and was possessed thereof until the said *O.* afterwards, to wit, on the same twentieth day of *September* in the sixth year aforesaid, with force and arms, &c. entered into the tenements aforesaid, in and upon the possession of the said *C.* thereof, and ejected, expelled and amoved the said *C.* from
his

his said farm, (his said term therein being not then nor yet ended) and held out and yet holds out the said C. from his possession thereof; also his other term yet to come of and in three mesuages, three gardens, nine other acres of land, seven other acres of meadow, and seven other acres of pasture, with the appurtenances, situate, lying and being in D. aforesaid in your county, which the said Sir J. E. bart. on the first day of *October* in the sixth year aforesaid, demised to the said C. for a term of years which is not yet past, to wit, from the twenty-fourth day of *June* last past unto the full end and term of other seven years thence next following, and fully to be compleat and ended. By virtue of which said demise last mentioned, the said C. entered into the said tenements last mentioned, with the appurtenances, and was possessed thereof until the said O. afterwards, to wit, on the same day of *October* in the sixth year aforesaid, with force and arms, &c. entered into the said tenements last mentioned, with the appurtenances, in and upon the possession of the said C. thereof, and ejected, expelled and amoved the said C. from his said farm last mentioned, (his said term therein then and yet being not ended) and held out, and still holds out the said C. from his possession thereof, whereof he is convicted, as appears to us of record. *Therefore* we command you, that without delay you cause the said C. to have his possession of his said terms yet to come of the said fourteen acres of land, seven acres of meadow and seven acres of pasture, with the appur-

appurtenances first above mentioned; also of the said three mesuages, three gardens, nine other acres of land, seven other acres of meadow, and seven other acres of pasture, with the appurtenances last mentioned; and make appear to us at *Westminster* on, &c. in what manner you shall execute this our writ. And have there this writ. Witness, &c.

Award of a mittimus to the justices in the county palatine of Lancaster to try an issue joined in
B. R.

And the said P. likewise, &c. Therefore let there be a jury thereof made. And because the issue aforesaid between the parties aforesaid above joined, ought to be tried by men of the said county palatine of Lancaster, that is to say, of the body of the said county, where his said majesty's writ doth not run, and not elsewhere. Therefore to trying the issue aforesaid, between the parties aforesaid above joined, let the record of the plaint aforesaid be sent to his said majesty's justices there, so that the same justices, by his majesty's writ of the county, do command the sheriff of the same county that he cause twelve free and lawful men of the body of the said county of Lancaster to come before the said justices at their next session of assises, there before them to be holden, each of whom shall have 10 l. a year at the least of lands, tenements or rents, by whom the truth of the matter may the better be known and inquired into, and who are in no wise related either to the said P. or to the said D. to recognize the truth of the matter in issue between the parties aforesaid; because as well the said D. as the said P. between whom the controversy is;
have

have put themselves upon that jury; and when the verification and issue aforesaid shall be there made and tried, then the said justices shall send the record of the said plaint, together with every thing that shall be done thereupon in his said majesty's court there, to our said lord the king at *Westminster*, at a certain day, which the same justices of the said county palatine shall appoint to the said parties, to be in the same court then to hear judgment thereupon, &c.

—————To our justices of our county palatine of *Lancaster* greeting. The tenor of a certain record before us at *Westminster*, between *A. B.* plaintiff and *C. D.* defendant, in a plea of trespass we send you inclosed herein, commanding that you, (having inspected the same), by your writ of our said county palatine, do command the sheriff of the same county, that he cause twelve free and lawful men of the body of the said county palatine to come before you at your next session after this writ shall be delivered to you, each of whom to have 10*l.* a year at the least of lands, tenements or rents, by whom the truth of the matter may the better be known and inquired into, and who are in no wise related either to the said *A.* or to the said *C.* to recognize and make a certain jury of the county between the said parties in the plea aforesaid; because as well the said *C.* as the said *A.* between whom the controversy is, have put themselves upon that jury; and also that you make such further process against the said

Mittimus to
the justices of
the county pa-
latine of Lan-
caster, to try
an issue joined
in B. R.

said jury so to be impanelled between the said parties, as are in this behalf used and commonly made, according to the law and custom of the said county, until the issue aforesaid between the said parties shall be fully tried; and when the verification and issue aforesaid shall be there made and tried before you, then do you send the record of the plaint aforesaid, together with every thing that shall then and there be done before you therein, and also this writ, to us at *Westminster*, at a certain day which you shall appoint to the said parties, to be there to hear judgment thereupon. . Witness, &c.

Wyrley.

On a writ of Pasch. 25 Car. 2. Ann. Dom. 1673.
partition. ro. 390.

Entry of a writ of mittimus, of a writ of dedimus potestatem, to admit a guardian of one of the defendants, being an infant, and the return, &c.
Writ of mittimus.

THE lord the king sent to his justices of the bench here his writ of *mittimus* close, together with the tenor of a certain writ of *dedimus potestatem* of and for the admission of a guardian or guardians of R. C. esq; being within age, and the return of the same writ, and also the admission of a guardian thereupon received, in these words; *Charles the second, &c.* To his justices of the bench greeting. The tenor of our certain writ of *dedimus potestatem* directed to our beloved and trusty Sir R. P. knt. and to our beloved R. P. esq; T. D. gent. G. F. gent. R. C. gent. M. S. gent. and J. W. gent. of and for the admission of a guardian

guardian or guardians of *R. C.* esq; being within age, to prosecute and defend a plaint which is before you, by our writ, between *R. B.* esq; *A. M.* esq; and *R. C.* gent. and the said *R.* and *I. C.* spinster, for that the said *R. A.* and *R.* and the said *R.* and *I.* together and for undivided hold the manors of *Bettons* and *Milkwell*, with the appurtenances, and eight mesuages, five cottages, ten gardens, ten orchards, one hundred acres of land, fifty acres of meadow, three hundred and forty acres of pasture, and eight acres of wood, with the appurtenances in *Camberwell* and *Lambeth* in the county of *Surrey*, the same *R.* and *I.* partition thereof between them, according to the form of the statute in such case made and provided to be made, refuse, and unjustly, and contrary to the form of the said statute, do not permit the same to be done, as it is said, and of the return or indorsement of the same writ, and also of a certain schedule annexed to the same writ sent to us in our *Chancery*, and remaining on the files of our same *Chancery*, we send to you inclosed in these presents, commanding, that inspecting the said tenors, you cause further to be done for the admission of the said guardian or guardians, according to the law and custom of our kingdom of *England*. Witness Ourselves at *Westminster*, the thirtieth day of *April* in the twenty fifth year of our reign, *Gladman. Charles the second, &c.* To his beloved and trusty Sir *R. P.* knt. and to his beloved *R. F.* esq; *T. D.* gent. *G. F.* gent. *R. C.* gent. *M. S.* gent. and *J. W.* gent. greet-
The dedimus
potestatem for
admitting the
guardian.

VOL. II.

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ing.

ing. Know that we have given to you, six, five, four, three or two of you, power of admitting a guardian or guardians of *R. C.* esq; being within age, as it is said, to prosecute and defend a plaint which is before our justices of the bench, by our writ, between *R. B.* esq; *A. M.* esq; and *R. C.* gent. and the said *R.* and *I. C.* spinster, for that the same *R. A.* and *R.* and the said *R.* and *I.* together and for undivided hold the manors of *Bettons* and *Milkwell*, with the appurtenances, and eight messuages, five cottages, ten gardens, ten orchards, one hundred acres of land, fifty acres of meadow, three hundred and forty acres of pasture, and eight acres of wood, with the appurtenances, in *Camberwell* and *Lambeth* in the county of *Surrey*, the same *R.* and *I.* refuse that partition be made thereof between them, according to the form of the statute in such case provided, and unjustly, and contrary to the form of the said statute, do not permit the same to be done, as it is said; and therefore we command you, six, five, four, three or two of you, that when you shall have admitted the said guardian or guardians, you certify to us in our *Chancery*, under your, six, five, four, three or two of your seals, the name or names of the same guardian or guardians, remitting to us this writ. Witness Ourselves at *Westminster* the 28th day of *February* in the twenty-fifth year of our reign. *Gladman.* By the lord chancellor of *England*, at the instance of the demandants *S. C.* The execution of this writ appears in a schedule to this writ annexed. *R. F. T. D.*

The return.

received

received 6 s. 8 d. *J. L.* The answer of *R. F.* esq; and *T. D.* gent. commissioners in the annexed writ, who say that the within-named *R. C.* esq; within age, on the 11th day of *April* in the twenty-fifth year of the reign of our sovereign lord *Charles* the second, now king of *England, &c.* at *Adderly* in the county of *Salop*, came before us and chose Sir *J. C.* bart. to be his guardian, who is admitted to prosecute and defend for the same *R.* of and in the plaint in the said writ mentioned, between *R. B.* esq; *A. M.* esq; and *R. C.* gent. and the said *R. C.* and *I. C.* spinster, of and in the manors of *Bettons* and *Milkwell*, and lands mentioned in the annexed writ. *R. F. T. D.* *Surrey, to wit, It is granted* by the court of the king here, that *J. F.* esq; sue for *A guardian admitted by the court for another infant defendant.* *I. C.* spinster, who is within the age of twenty-one years, as guardian of the said *I.* against *R. B.* esq; *A. M.* esq; and *R. C.* gent. of a plea of making partition.

Surrey, to wit, R. C. esq; and *I. C.* spinster, were summoned to answer *R. B.* esq; *A. M.* esq; and *R. C.* gent. of a plea, wherefore whereas the same *R. A.* and *R.* and the said *R.* and *I.* together and for undivided hold the manors of, &c. in *Camberwell* and *Lambeth*, the same *R.* and *I.* refuse partition thereof to be made between them, according to the form of the statute in such case provided, and unjustly, and contrary to the form of the said statute, do not permit the same to be done, &c. *And* whereupon the said *J. C.* seised in *R. A.* and *R.* by *W. W.* their attorney, say, *see simple.* that whereas one *J. C.* esq; was lately seised of

*By indentures
of lease and
release, con-
veys to J. H.
and T. G.*

*Lease for a
year.*

*Stat. 27 H. 8.
for transfer-
ring uses into
possession.*

and in the manors and tenements aforesaid, with the appurtenances, amongst other things, in his demesne as of fee ; *And* being so seised thereof, afterwards in the life-time of the said J. to wit, on the twentieth day of *April* in the nineteenth year of the reign of the lord *Charles* the first, late king of *England*, by a certain indenture made at *Camberswell* aforesaid, between the said J. by the name of *J. C.* of *London*, esq; of the one part, and *J. H.* and *T. G.* gent. by the names of *J. H.* citizen of *London*, and *T. G.* of *Chinkford* in the county of *Essex*, of the other part, the counterpart whereof sealed with the seals of the said J. and T. the said *R. A.* and *R.* bring here into court, the date whereof is on the same day and year, the said J. in consideration of 5*l.* of lawful money of *England*, to him by them in hand paid, granted, bargained and sold to the same J. and T. the manors and tenements aforesaid, with the appurtenances, amongst other things, to have and to hold to the same J. and T. their executors, administrators and assigns, from the feast of the Annunciation of the blessed virgin *Mary* then last past, for the term of half of one year then next following, fully to be complete and ended, if the said J. should live so long. By virtue of which demise the said J. and T. entered into the said manors and tenements, with the appurtenances, amongst other things; *And* by pretext thereof, and by force of a certain act made and provided in the parliament of the lord *Henry* the eighth, late king of *England*, for trans-

ferring

ferring uses into possession, held on the fourth day of *February* in the twenty-seventh year of his reign, at at *Westminster* in the county of *Middlesex*, were possessed thereof; And being *Indenture of release.* so possessed thereof, by a certain other indenture made at *Camberwell* aforesaid, on the thirtieth day of *April* in the nineteenth year aforesaid, between the said *J.* by the name of *J. C.* of *London*, esq; of the one part, and the said *J.* and *T.* by the names of *J. H.* citizen of *London*, and *T. G.* of *Chinkford* in the county of *Essex*, gent. of the other part, the counterpart whereof sealed with the seals of the said *J.* and *T.* the said *R. A.* and *R.* bring here into court, the date whereof is on the same day and year, the same *J.* for and in consideration of the natural love and affection which he had and bore to one *T.* then his wife, and for a jointure to be made and settled to and upon the said *T.* in bar and lieu of her dower, and for divers other good causes and considerations him thereunto moving, he the said *J.* granted, released and confirmed to the said *J. H.* and *T. G.* their heirs and assigns, the manors and tenements aforesaid, with the appurtenances, amongst others, and the reversion and reversions thereof, to have and to hold to the said *J. H.* and *T. G.* their heirs and assigns for ever, to the uses following, that is to say, to the use of the said *J. C.* for and during the term of his natural life, and after his death to the use of the said *T.* for her natural life, for and in lieu and recompence of such title of dower and thirds, as the said *T.* should have and

To the use of J. C. for life.
To the use of his wife for life.

*To the use of
the said J. C.
his heirs and
assigns for
ever.*

*J. C. had issue
J. J. T.
P. and I.*

*Died.
His wife survived him.*

*J. and J. the
sons die without issue.*

claim of and out of the manors; lands and tenements of the said J. C. and afterwards to the use of the said J. C. his heirs and assigns for ever, as by the same indenture more fully appears. By virtue of which said indenture last specified, and by force of the said act made and provided in the parliament of the said lord *Henry* the eighth, late king of *England*, for transferring uses into possession, held on the fourth day of *February* in the twenty-seventh year of his reign, at *Westminster*, aforesaid, the said J. was seised of the said tenements, with the appurtenances, amongst others, in his demesne as of freehold, for and during the term of his natural life, the remainder thereof over as above limited. And the said J. being so seised had issue, to wit, J. C. and J. C. his sons, and T. P. and I. his daughters. And the said J. C. the father being so seised of such his estate, afterwards, to wit, on the first day of *June* in the thirteenth year of the reign of our lord the present king, at *Camberwell*, aforesaid died, and the said T. his wife survived him, and entered into the said manors and tenements, with the appurtenances, amongst others, and was seised thereof in her demesne as of freehold, for the term of her natural life, the remainder thereof over as above limited. And the said T. being so seised thereof, the said J. the son, and J. C. afterwards, to wit, on the first day of *August* in the nineteenth year of the reign of our said lord the present king, at *Camberwell* aforesaid died without issue, and the said

said *T.* survived them. And afterwards, to wit, on the second day of *August* in the nineteenth year aforesaid, at *Canberwell* aforesaid, the said *T.* the daughter, *cepit in virum* Sir *J. C.* bart. And by the said Sir *J. C.* had issue the said *R.* and the said *T.* the daughter, afterwards, to wit, on the fifteenth day of *September* in the twenty-second year of the reign of our said lord the present king, at *Canberwell* aforesaid died. And the said *T.* the wife of the said *J.* survived her, and was and continued seised of the said tenements, with the appurtenances, amongst others. And the said *T.* the wife of the said *J.* being seised of such her estate therein as aforesaid, afterwards, to wit, on the second day of *February* in the twenty-third year of the reign of our said lord the present king, at *Canberwell* aforesaid died, and the said *R. P.* and *I.* survived the said *T.* the wife of the said *J.* the remainder of the said manors and tenements, with the appurtenances, belonging to the said *R. P.* and *I.* after the death of the said *T.* as co-heirs of the said *J.* to wit, to the said *R.* as son and heir of the said *T.* the daughter, and to the said *P.* and *I.* as daughters of the said *J.* By which the said *R. P.* and *J.* entered into the said manors and tenements, with the appurtenances, amongst others, and were seised thereof in their demesne as of fee, to wit, the said *R.* of one third part of the said manor and tenements, with the appurtenances, to him and his heirs *contingen'*; and the said *P.* of one other third part of the said manors and tenements, with

T. the daughter marries Sir J. C.

and by him had issue the defendant R.

T. the wife dies.

the appurtenances, to her and her heirs *contingen'*; and the said *I.* of one other third part of the said manors and tenements, with the appurtenances to her and her heirs *contingen'*; And the said *R. P.* and *I.* being *P. marries the* plaintiff *R. B.* seised in form aforesaid, the said *P. cepit in virum* the said *R. B.* whereby the same *R. B.* and *P.* entered into the said manors and tenements, with the appurtenances, and were seised of the said third part of the said manors and tenements, with the appurtenances, to the same *P.* as aforesaid *contingen'*, in their demesne as of fee, in right of the said *P.* and the said *R. B.* and *P.* being seised of the third part of the said manors and tenements, with the appurtenances, to them in the right of the said *P.* as aforesaid *contingen'*, a certain fine levied in the court of our lord the king now here, to wit, at *Westminster*, * from the day of *St. Michael* in one month in the twenty-fourth year of his reign, before *J. V. J. A. W. W.* and *R. A.* justices, and other faithful subjects of our lord the king then there present, between *W. M.* esq; and *A. E.* gent. plaintiffs, and the said *R. B.* and *P.* his wife, deforceants, of the same third part *ipso P. contingen'*, by the name of a third part of the manors of *Bettons* and *Milkwells* with the appurtenances, and of a third part of eight messuages, &c. in *Camberwell* and *Lambeth* aforesaid, whereof a plea of covenant was summoned in the same court, to

*A fine levied
of her third
part.*

* No such return. See *Vol. 1. p. 63.*

wit, that the said *R. B.* and *P.* acknowledged the said third part, with the appurtenances, to be the right of the said *W.* as that which the said *W.* and *A.* had of the gift of the said *R. B.* and *P.* and that they remised and quit-claimed for them the said *R. B.* and *P.* and their heirs, to the said *W.* and *A.* and the heirs of the said *W.* for ever; and moreover the said *R. B.* and *P.* granted for them and the heirs of the said *P.* that they would warrant to the said *W.* and *A.* and the heirs of the said *W.* the said third part, with the appurtenances, against them the said *R. B.* and *P.* and the heirs of the said *P.* for ever; which said fine in form aforesaid had and levied, was had and levied to the use of the said *R. B. A. H.* and *R. C.* and their heirs for ever. By virtue of which said fine the said *R. A.* and *R.* were, and still are seised of the same third part of the manors and tenements aforesaid, with the appurtenances, in their demesne as of fee; and so the said *R. A.* and *R.* say, that they and the said *R.* and *I.* together *et pro indiviso* hold the said manors and tenements, with the appurtenances, in form aforesaid made; it belongs to them the said *R. A.* and *R.* to hold one third part of the said manors and tenements, with the appurtenances, and to the said *R.* it belongs to hold one other third part of the said manors and tenements, with the appurtenances; and to the said *I.* it belongs to hold one other third part of the said manors and tenements, with the appurtenances, *resid' tenend' eis in paralitate*; so that the same *R. A.* and *R.* of one

To the use of
the plaintiffs.

one third part of the said manors and tenements, with the appurtenances, belonging to them the said *R. A.* and *R.* as aforesaid, and the said *R.* of another third part of the said manors and tenements, with the appurtenances belonging to him the said *R.* as aforesaid, and the said *I.* of another third part of the said manors and tenements belonging to her the said *I.* as aforesaid, separately *appurare se possint*; the same *R.* and *I.* refuse partition thereof to be made between them, according to form of the statute in such case provided, and unjustly, and contrary to the form of the said statute, do not permit the same to be done, &c. wherefore they say they are injured, and have damage to the value of 100*l.* and thereof they bring suit, &c.

*Judgment by
nihil dicit.*

And the said *R.* by Sir *J. C.* bart. who is admitted to prosecute for the same *R.* who is within the age of twenty-one years, as guardian of the said *R.* of the plea aforesaid, and the said *I.* by *J. F.* esq; who is admitted by the court of our lord the king here to prosecute for the same *I.* who is within the age of twenty-one years, as guardian of the said *I.* of the plea aforesaid, come and defend the force and injury, when, &c. and say nothing in bar or preclusion of the said action of the said *R. A.* and *R.* and say nothing else thereupon. By which the said *R. A.* and *R.* remain against the said *R.* and *I.* thereof undefended. *Therefore it is considered,* that partition between the said *R. A.* and *R.* and the said *R.* and *I.* of the said manors and tenements, with the appurtenances, be

made,

made, &c. and nothing of mercy of the said
R. and I. because they are under age, &c.

Upon which it is commanded to the sheriff, *Writ to the*
that in his proper person he go to the said *sheriff to make*
manors and tenements, with the appurte- *partition.*

nances, and in the presence of the said parties to be summoned by him the said sheriff, if they will be present, and he cause the same manors and tenements, with the appurtenances, by the oath of good and lawful men of the said county, respect being had to the true value of the said manors and tenements, with the appurtenances, into three equal parts to be divided; and one part of the said parts to the said R. A. and R. and another part thereof to the said R. and another part, residue thereof, to the said I. to hold to them and their respective heirs, severally to be delivered and assigned, so that neither the said R. A. and R. nor the said R. nor the said I. have more of the said manors and tenements, with the appurtenances, than belongs to them to hold; and that the said R. A. and R. of their third part belonging to them of the said manors and tenements, with the appurtenances, and the said R. of his third part belonging to him of the said manors and tenements, with the appurtenances, and the said I. of her third part belonging to her of the said manors and tenements, with the appurtenances, separately *appruare se possint*; and that the said sheriff have here from the day of the *Holy Trinity* in three weeks, that partition by him distinctly and openly made under his seal, &c. and the seals, &c.

At
which

The return.

*Continuance by
cur. advisari
vult.*

*which day came here as well the said R. A. and R. as the said R. and I. by their attornies aforesaid, and the sheriff, to wit, J. B. esq; now returns here a certain partition between the parties aforesaid of the manor and tenements aforesaid, with the appurtenances, by him, before him, by virtue of the said writ, and according to the form of the said writ, by the oath of twelve, &c. made in these words: Surrey, to wit, I J. B. esq; &c. And because the justices here will advise themselves of and upon the premisses before they give judgment thereon; day is given to the said R. A. and R. here until * from the day of St. Michael in three weeks, to hear their judgment thereupon; for that the said justices here are not yet, &c. At which day came here the said R. A. and R. by their attorney aforesaid; and upon this the said premisses being seen, and by the justices here fully understood, it is considered *quod partitio præd' firma et stabilis imperpetuum, &c.**

*Sci. fa. quare
execution'
non, &c. on a
judgment in an
inferior court,
removed by
writ of error.
B. R.*

*To the sheriff of Devonshire greet-
ing. Whereas W. B. in our court before the
mayor of the borough of Totness in your
county, by the judgment of the same court
recovered against W. G. 5 l. 3 s. 4 d. which
in our said court were adjudged to the said W.
B. for his damages which he sustained as well
by occasion of the not performing certain pre-
mises and undertakings made to the said W.*

* No such return. See Vol. 1. p. 63.

B. by the said *W. G.* and not performed, as for his costs and charges expended by him about his suit in that behalf, whereof the said *W. G.* is convicted, as by the inspection of the record and process thereupon, which for the cause of error intervening we lately caused to come in our court before us, and in our said court before us is now remaining, more fully appears; and now on the behalf of the said *W. B.* we have been lately informed in our court before us, that although judgment be therein given, yet execution of the said judgment still remains to be made to him; whereupon the said *W. B.* hath prayed us that a proper remedy may be provided for him in this behalf. And we being willing that what is just should be done in this behalf, command you, that by good and lawful men of your bailiwick you make known to the said *W. G.* that he be before us in fifteen days of *St. Martin*, wheresoever we shall then be in *England*, to shew, if any thing he has or knows to say for himself, why the said *W. B.* ought not to have execution of the damages aforesaid, according to the force, form and effect of the said recovery, if it shall seem expedient to him, and further to do and receive what our said court before us shall then consider of him in this behalf, and that you have thereupon the names of those by whom you shall make known to him and this writ. Witness,

&c.

Pasch.

Pasch. 16 Geo. 2.

Entry of sci.
fa. sur judic.
post ann. &
diem.

Kent, OUR lord the king sent to the she-
riff of *Kent* his writ close in
these words, to wit, *George* the second, by
the grace of God, of *Great Britain, France*
and *Ireland* king, defender of the faith, &c.
To the sheriff of *Kent* greeting: Whereas
H. P. lately in our court before us at *Westmin-*
ster, by bill, without our writ, and by the
judgment of the same court, recovered against
A. P. 1352 *l.* for debt, and also 63 *s.* for his
damages which he sustained as well by occa-
sion of the detaining that debt, as for his
costs and charges laid out by him about his
suit in that behalf, whereof the said *A.* is con-
victed, as appears to us of record; and now
on the behalf of the said *H.* we have been in-
formed in our court before us, that although
judgment be thereupon given, yet execution
for the said debt and damages still remains to
be made to him; whereupon the said *H.* hath
prayed us that a proper remedy may be pro-
vided for him in this case; and we being wil-
ling that what is just should be done on this
behalf, command you, that by good and
lawful men of your bailiwick you make known
to the said *A.* that he be before us at *Westmin-*
ster on *Monday* next after the morrow of the
Ascension of our Lord, to shew, if any thing
he has or knows to say for himself, why the
said *H.* ought not to have his execution against
him for the debt and damages aforesaid as

cording

according to the force, form and effect of the said recovery, if it shall seem expedient to him, &c. and further to do and receive what our said court before us shall then and there consider of him in this behalf, and have there then the names of them by whom you shall make known to him, and this writ. Witness Sir *W. L.* knt. at *Westminster*, the seventh day of *May* in the sixteenth year of our reign. At which day before our lord the king at *Westminster* the said *H. P.* comes in his proper person. And the sheriff of *Kent*, to wit, *T. W.* esq; sheriff of the said county of *Kent*, Return nihil. returns that the said *A. P.* hath nothing in his bailiwick, whereby or by which he can cause him to know, neither is he found in the same; and the said *A.* comes not. Therefore, as before, it is commanded to the sheriff, that by good and lawful men of his bailiwick he make known to the said *A.* that he be before our lord the king at *Westminster* on *Friday* next after the morrow of the *Holy Trinity*, to shew in form aforesaid, if, &c. and further, &c. The same day is given to the said *H.* at the same place, &c. At which day before our lord the king at *Westminster* the said *H.* comes in his proper person, And the sheriff, as before, returns that the said *A.* hath nothing in his bailiwick whereby or by which he could cause him to know, neither is he found in the same. And the said *A.* although at the same day solemnly demanded, comes not, but made default. Therefore it is considered, that the said *H.* have his execution

Alias awarded.

Return nihil.

Judgment by default.

tion

tion against the said *A.* for the debt and damages aforesaid, according to the force, form and effect of the said recovery, by the default of the said *A.* &c.

Roll 381.

Lee.

*Sci. fa. quare
execution non
after error on
a judgment in
the palace
court. B. R.*

——— *To the sheriff of Surrey greeting.*
Whereas *J. T.* lately in the court of our palace of *Westminster* before the judges of that court, without our writ, by the judgment of the same court, recovered against *T. W.* 6*l.* 19*s.* 10*d.* for his damages which he sustained as well by occasion of the not performing certain promises and undertakings made by the said *T.* to the said *J.* at *Southwark* in your county, and within the jurisdiction of the same court, as for his costs and charges expended by him about his suit in that behalf, whereof the said *T.* is convicted, as by the inspection of the record and process thereof, which lately in our court before us at *Westminster* now remaining, and which for certain causes we lately caused to be brought into our same court before us, appears to us of record; and now on the behalf of the said *J.* in our court before us we have been informed, that although judgment be thereof given, yet execution of the said damages still remains to be made to the said *J.* whereupon the said *J.* hath besought us that a proper remedy may be provided for him in this behalf. And we being willing that what is just should be done in this behalf, do command you, that by good and lawful men of your bailiwick you make

make known to the said *J.* that he be before us on the octaves of *St. Hilary*, wheresoever we shall then be in *England*, to shew, if any thing he has or knows to say for himself, why the said *J.* ought not to have his execution against him of the damages aforesaid, according to the force, form and effect of the said recovery, if it shall seem expedient to him, and further to do and receive what our same court before us shall consider of him in this behalf, and have there the names of those by whom you shall make known to him, and this writ. Witness, &c.

———To the mayor, aldermen and sheriffs of *London*, also to all captains and other officers and ministers in this behalf whatsoever, and to every one of them, greeting. Superfedeas for one of the clerks of the chief clerk not to bear arms or serve as a soldier. B. R. Whereas as well from our royal dignity, as from ancient custom from time out of mind used and approved in the court of us and our progenitors, formerly kings and queens of *England*, before us and our said progenitors, all and singular our justices to hold pleas before us, also all and singular officers, clerks, attornies and ministers of the same court, who are bound by oath to bestow their service to us and our people, to exercise any offices or services elsewhere than in our said court, whereby from our said court, or from their due attendance there, they may be withdrawn or retarded, according to the liberties and privileges of our said court, for the whole time aforesaid used and approved in the same,

VOL. II. P p ought

ought not, nor at times past have been used to be chosen, drawn, bound or compelled; yet you, or some of you, having no regard to the dignity and privileges aforesaid, as we are informed, have chosen and charged, or caused to be chosen and charged, or at least intend and threaten to chuse and charge one *A. M.* gent. one of the clerks of Sir *R. H.* knt. and *S. T.* esq; our chief clerks assigned to enrol pleas in our court before us, whose attendance is required in our same court before us, as according to the duty of his office he is bound, to serve as a soldier under the command of you or of some of you, or in the militia or trained-bands in your county, or to bear or exercise military arms, which if it be permitted will tend to the hurt and injury of us and of our subjects prosecuting and defending in our same court, and of the said *A.* also to the overthrow of our said court, and of the dignity and privileges aforesaid; whereupon the said *A.* humbly supplicating us, has informed us of the premisses, and We favouring the supplication of the said *A.* and willing that our dignity be maintained, and the liberties and privileges of our said court be observed, command you and every one of you, that you and every one of you intirely supersede from in any manner hereafter chusing, charging, or compelling the said *A.* to do any such service or business of a soldier, or of one of the militia or trained-bands, or to bear and exercise any arms as aforesaid; and if before the receipt of this writ

writ you have chosen and charged the said *A.* to do any such service or business, or to bear and exercise any arms as aforesaid, that then you and each of you without delay discharge and release the said *A.* from all such service or business, and from all his attendance thereupon, and the chusing and charging of the said *A.* in this behalf being wholly omitted, you cause one other man, as to his estate and possessions more fit, to be in due manner chosen and charged in his place, at your peril. Witness *J. K. &c.*

— To the mayor, aldermen and sheriffs of the city of *London*, and to every of them, greeting. *Whereas* as well on account of our royal dignity, as by ancient custom agreeable thereto, used and approved in times past, hitherto the usage hath been, that all and singular the attornies of our court before us ought not, neither have they during all the time aforesaid been, nor have used or been accustomed to be drawn or compelled to answer (elsewhere than in our said court before us) before any secular judges in any pleas or complaints, (pleas of freehold and appeal only excepted;) and now on the behalf of *J. A.* gent. one of the attornies of our said court before us, we are informed that Sir *J. B.* knight chamberlain of the said city of *London*, notwithstanding the premisses, and not regarding our royal dignity, nor the custom aforesaid, hath drawn the said *J. A.* into plea in our court before you, some or one of you, under

Writ of privilege for an attorney B.R. to a suit against him in the mayor's court, London.

pretence of a certain plaint levied against the said *J. A.* before you, some or one of you, in a certain plea of debt upon demand of five pounds of lawful money of *Great Britain*, at the suit of him the said Sir *J. B.* chamberlain, as aforesaid, to the manifest prejudice and lessening of our dignity and infringement of the custom aforesaid, and to the great expence and hindrance of the said *J. A.* which practice, if it should be permitted, would hereafter afford an ill example to others; We therefore command and strictly injoin you and every one of you, that you and every of you, wholly desist from any further proceeding in the plaint aforesaid before you, or any of you, declaring to the said Sir *J. B.* so prosecuting the said plaint before you, some or one of you, that he repair to our court before us there to seek for justice in that behalf, if he shall think fit so to do. Witness Sir *W. L.* knt. at *Westminster* the fourteenth day of *June* in the ——— year of our reign.

Lec.

John Alexander proper,
23 June 17—.

*Superedeas
for a clerk of
the chief clerks
and his ser-
vant to the
judges of the
court of Com-*

————— *To* our beloved and trusty Sir *E. A.* knt. and his companions, our justices of the bench, greeting. *Whereas* as well from our royal dignity, as from ancient custom from times long past hitherto used and approved, it has obtained that our chief clerks assigned

assigned to inrol pleas in our court before us *mon Pleas, to*
 and their clerks, and the servants of their *stay a suit*
 clerks, ought not, and for the whole time *against them*
 have not been used, in any other place than *there in a plea*
 in our same court, to be drawn or compelled *of trespass.*
 to answer before any secular judges in any *B. R.*
 pleas or plaints, (plea of freehold only ex-
 cepted); *And* now in our same court before
 us, on the behalf of *J. E.* gent. one of the
 clerks of *T. R.* and *J. R.* esqrs. our chief
 clerks assigned to inrol pleas in our court
 before us, and of *R. J.* servant of the said
J. E. We are given to understand, that one
J. P. slighting the said custom has drawn the
 said *J. E.* and *R.* by the names of *J. E.* of,
Ec. and *R. J.* of, *Ec.* before you into plea,
 in a plea of trespass, to the great expence
 and grievance of the said *J. E.* and manifest
 breach of the liberties and privileges aforesaid
 in our court before us for the whole time
 aforesaid hitherto used and approved, where-
 of it is agreeable to us to provide for him a
 speedy remedy; and we being willing that
 the said liberties and privileges for so long
 time hitherto used and approved be kept un-
 broken, command you, that you altogether
 supersede from further holding the said plea
 before you, or from compelling the said *J. E.*
 and *R. J.* to answer further upon the same
 plea before you, telling on our behalf to the
 said *J. P.* that he come to our said court be-
 fore us, there to obtain justice, if he will.
 Witness *C. W. Ec.*

*Superfedeas
for the sheriff
of Middlesex
as an officer of
B. R. directed
to the judges
of the court of
C. B. upon an
action com-
menced by a
clerk of an
exigent in
C. B. against
the sheriff.*

* ——— To Sir J. B. knt. and his compa-
nions, our justices of the bench greeting.
Whereas as well from our royal dignity, as
from ancient custom, according to the same
in times past used and approved it has hitherto
obtained, that all ministers in our court be-
fore us daily attending our said court, any
where but in our same court before us, to
answer before any justices or secular judges
upon any pleas or complaints (pleas of freehold
only excepted) to be drawn or compelled
ought not, nor for the whole time aforesaid
have been accustomed. *And* now in our
same court before us, on the behalf of J. J.
sheriff of the county of *Middlesex*, and one
of the ministers in our same court before
us, by reason of his office of sheriff of the
said county of *Middlesex*, executing and re-
turning all and singular writs and precepts
of our said county of *Middlesex*, we are given
to understand, that one J. F. one of the clerks
of W. J. one of the exigers in the bench,
little regarding the said custom, the said
J. before you draws in plea in a plea of tres-
pass

* This writ was granted by the court, for that the she-
riff returned a rescue, when J. F. supposing he had made
no rescue, brought this action against the sheriff for a false
return, and upon the granting this writ a dispute arose be-
tween W. F. clerk of the crown and W. R. prothonotary,
in whose office this writ ought to be made, who not
agreeing between themselves, at last by the court in full
court it was agreed, that it should be made out by the
prothonotary, for that the said writ of rescue only con-
cerned the person of the sheriff of *Middlesex*.

pass to the grievance and no small expence of the said J. J. and manifest violation of the said liberties and privileges in our said court before us for the whole time aforesaid hitherto approved, wherefore it seems agreeable to us to provide him a speedy remedy; and We being willing that the liberties and privileges aforesaid, for so long time used, be inviolably observed, command you, that from further holding before you the plea aforesaid, and from compelling the said J. J. further to answer upon the same plea, you intirely supersede, telling on our behalf the said J. F. that he may come to our said court before us, there to obtain justice if he will. Witness E. M. knt. &c.

*Bail-piece in
auditaquerela.*

Marshall, to wit, *J. L.* of, &c. is delivered on bail to prosecute with effect a writ of *audita querela*, by him brought to be discharged of and from a judgment given against him in the court of his late majesty *Charles* the first, late king of *England*, at the suit of one *T. W.* for one hundred pounds of debt, and for damages, costs and charges.

To *J. D.* of, &c. yeoman,
E. F. of, &c. yeoman.

(Four bail required.)

J. B.
Attorney.

*Form of taking
the recogni-
zance.*

You severally acknowledge yourselves to owe to *T. D.* the plaintiff in the original action, the sum of —.

The condition.

Upon condition, that the plaintiff in the *audita querela* shall prosecute his writ with effect; and if the said plaintiff shall happen to be convicted, or make default in the premisses,

misses, that he shall pay the condemnation money, or you will do it for him.

Are you content ?

England, to wit, Satisfaction acknowledged between C. K. esq; plaintiff in error, and G. D. gent. one of the attornies of his majesty's court of common bench at *Westminster*, defendant in error on a judgment of the said court of the bench.

*Satisfaction-
piece on a judg-
ment affirmed
in error.*

Damages ——— 43 l.

Costs on affirming the }
judgment — 13 l.

R. R.
Attorney.

Judgment entered of *Easter* term
14 Geo. 2.

Roll 254

Between

Between { *R. L.* — plaintiff,
and
M. U. gent. } defendant:
one of the
attornies,
&c. }

Common Pleas.

*C. B. Notice
to an attorney
of a bill filed
against him.
Att. Praet.
C. B. Vol. 1.*

TAKE notice, that a bill as of this present *Easter* term was this day filed against you in the office of *R. T. esq*; one of the prothonotaries of this court, at the suit of the above-named plaintiff *R. L.* in a plea of trespass on the case upon several premises, to the plaintiff's damage of twenty pounds; and that unless you appear to the said bill within four days you will be forejudged the court.

*R. R. by L. R. attorney
for the plaintiff,
25th May 1742.*

To Mr. *M. U.* the
defendant.

Monday next after five weeks from Easter
day in the fifteenth year of king George
the second.

H. } IT is ordered that the marshal of the *Rule for the*
C. } *Marshalsea* of this court do bring the *marshal to*
defendant into this court within three days *bring the de-*
next after notice of this rule to be given *endant into*
to him, or shall give a note in writing under *court, or ac-*
his hand, acknowledging the defendant to *knowledge him*
be in his actual custody, or shall shew cause *to be in custody,*
to the contrary within the time aforesaid, *&c. in order to*
and give notice thereof to the attorney for *his being char-*
the plaintiff. *ged in execu-*
tion.

By the court.

I acknowledge the defend-
ant to be a prisoner in
my custody this 27th
day of May 1742.

R. M. marshal.

Middlesex,

*Commitment
piece.*

Middlesex, to wit, *J. C.* late of the parish
of *St. Clement Danes* in the county of
Middlesex, esq; is committed in exe-
cution to the custody of the mar-
shal, &c. at the suit of *T. H.* for
forty-five pounds and ten shillings
damages, there to remain until, &c.

R. R.
Attorney.

Judgment of *Michaelmas* term in
the fifteenth year of king *George*
the second.

Roll 663.

Rule	—	4	0
Marshal	—	10	6
With committur piece		2	0
		<hr/>	
		16	6



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